THE PIPELINE

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IOGANY
Independent Oil & Gas Association of NY

38 Lake St. ▪ Hamburg, NY 14075
716-202-4688 Phone/Fax
www.iogany.org

Marginal Well Credit for 2016 Natural Gas Production Announced

By: Donald B. Nestor, CPA

Partner - Oil & Gas Industry Services – Arnett Carbis Toothman LLP

September 2017

The Internal Revenue Service announced September 12, 2017, in Notice 2017-51 that the Marginal Well Production Credit (MWC) for natural gas production from qualifying wells in calendar year 2016 is $.14 per mcf for the first 18 mcf of daily production. Our Firm is committed to staying up to date on issues that will benefit the oil and natural gas industry and those who serve its members. The following is a summary of this credit and its source and application.

Marginal well working interest owners have not experienced much in their favor in the past several years with lower production, lower gas sales prices, and increased operating, transportation, and regulatory costs. Surprisingly, a very positive current item for marginal well working interest owners may be found in the federal income tax area with a federal income tax credit for 2016 natural gas production. Internal Revenue Code Section 45I was passed by Congress as part of the American Jobs Creation Act of 2004. This MWC was based on production from qualified marginal wells. Qualified marginal oil wells are those with an average production of not more than 15 barrels per day, those wells producing heavy oil, or wells producing not less than 95% water with average production of not more than 25 barrels per day of oil. Qualified marginal natural gas wells are those producing not more than 90 mcf per day. The first step in determining wells that qualify for this credit is making certain they qualify as marginal wells, combining oil and natural gas equivalent units to determine marginal well status.

This tax provision allows a $3 per barrel tax credit for the first three barrels of daily oil production from an existing marginal well and a $.50 per mcf tax credit for the first 18 mcf of daily natural gas production from a marginal well. The second step is determining the actual average daily production from the qualified wells and limiting that production to a daily combined three barrels of oil and 18 mcf of natural gas in equivalent units of production. If oil produced from qualifying wells is not allowed in a year due to oil's reference price being too high, which was the case for 2016 production, it should be appropriate to include only natural gas in your 18 mcf of qualifying production calculation. The

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STAFF

Brad Gill
Executive Director
Email: brgill@iogany.org
Ext. 105

Michelle Fata
Office Administrator
Email: info@iogany.org
Ext. 100

Lorri Ball
Bookkeeper/Administrative Assistant
Email: lorrib@iogany.org
Ext. 101

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qualified average daily production under this limitation would then be applied to the number of days that the working interest owner actually owned that well interest.

The third step in determining the dollar amount of federal tax credit available is to apply the qualifying production in a year to the approved dollar amount per unit of production. For oil production, the original $3 credit per barrel was to be proportionately eliminated as the inflation adjusted average price of oil increased from $15 to $18 per barrel. For 2016 oil production, the inflation adjusted maximum credit of $3.70 per barrel was eliminated as the average allowable sales price of oil in 2015 increased from $18.50 to $22.20 per barrel and the 2015 reference price for oil was above $22.20 per barrel.

For 2016 natural gas production, there is a MWC for the first 18 mcf of daily production from qualifying wells of $.14 per mcf. The original maximum MWC of $.50 per mcf has now increased due to inflation to a maximum of $.6166 per mcf. The original $.50 per mcf credit was reduced as the average price of natural gas in the year prior to the production year increased from $1.67 to $2.00. With inflation, the 2016 natural gas maximum credit of $.6166 per mcf is reduced as the reference price of natural gas in 2015 increases from $2.06 to $2.47 per mcf. In other words, if the reference price for natural gas production is less than $2.47 per mcf in 2015, there will be a MWC for 2016 natural gas production.

The Internal Revenue Service is the agency that is to calculate and publish the 2015 natural gas reference price. This average natural gas price will determine the amount of credit per mcf of qualifying production no matter what producers actually sell their natural gas for in 2016. The Internal Revenue Service issued Notice 2017-51 listing the 2016 inflation adjustment factor of 1.2332 and the 2015 applicable reference price of $2.38 per mcf. Based on these factors, the MWC for 2016 natural gas production from "stripper wells" is $.14 per mcf.

This natural gas federal income tax credit for 2016 qualifying production is definitely good news. One additional limitation on use of this credit is that it may only offset regular income tax in excess of Alternative Minimum Tax (AMT). An offsetting benefit to this AMT limit is that any MWC not used in a year due to total tax or AMT limits may be carried back 5 years and over up to 20 years. This extended number of years to utilize this credit hopefully ensures a significant amount of Section 45I credit for 2016 natural gas production will be realized by those with qualifying marginal well production.

We will continue to monitor and update information about this credit as its specific application become better defined. If you have any questions concerning the above information or how this credit may be applied to benefit you, please contact the following Arnett Carbis Toothman LLP associates at 800-924-0729 or email at: don.nestor@actcpas.com, marlin.witt@actcpas.com, bill.phillips@actcpas.com, ryan.nestor@actcpas.com, wanda.bailey@actcpas.com. You may also contact any of our Arnett Carbis Toothman LLP offices and we will respond to your requests concerning this valuable credit or other planning needs you may have.

2018 Pipeline Newsletter
SCHEDULE

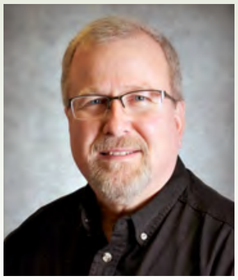
SPRING
Copy Deadline: 2/15

SUMMER
Copy Deadline: 5/15

FALL
Copy Deadline: 8/15

WINTER
Copy Deadline: 11/15

IN THE NEWS



Dan Palmer has joined the Board of Directors

Dan is a Crude Oil Manager for NY & PA with the American Refining Group, Inc. He can be reached at 814-558-0011 or via email at dpalmer@amref.com. Welcome Dan!

CALENDAR OF EVENTS

IOGANY EVENTS

www.iogany.org/events.php

IOGANY's 38th Annual Summer Meeting

Mark your calendars now!

July 11-12th, 2018

Peek'n Peak, Clymer, NY

Upcoming Industry Events

IOGAWV EVENTS

www.iogawv.com

IOGAWV Winter Meeting

January 23-24, 2018

Marriott Town Center Hotel

Charleston, WV

OOGA EVENTS

www.ooga.org

OOGA Winter Meeting 2018

March 7, 2018

Columbus, Ohio

WELCOME NEW MEMBER!

John King – PHV Device

5306 Southview Drive ▪ Lockport, NY 14094 ▪ 716-984-5097

Chking55@yahoo.com ▪ www.phvdev.com

NYS Department of Environmental Conservation

Orphan & Abandoned Well Plugging:

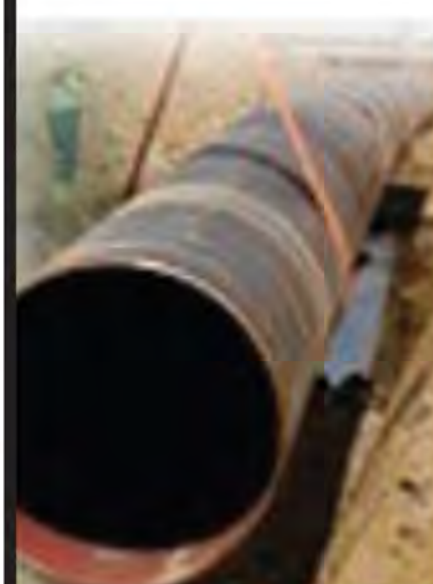
Orphan & Abandoned Wells

Abandoned wells are unplugged wells (primarily oil or gas wells) that have not been operated and maintained in accordance with prevailing statute and regulation. Many abandoned wells have fallen into advanced states of disrepair.

Orphan wells are a subset of abandoned wells. They are abandoned wells for which no owner can be determined. In most instances, these wells were drilled prior to the existence of a regulatory framework in New York. Due to their advanced age and the lack of comprehensive well information, these wells may present significant public health and environmental hazards.

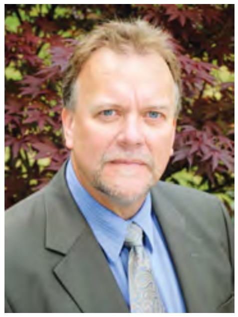
To address these threats, well plugging programs have been developed. Well plugging involves the placement of cement at discrete depth intervals in a wellbore to seal off hydrocarbon-bearing zones and prevent the pollution of aquifers and surface waters. If left unplugged, orphan and abandoned wells can provide unimpeded conduits for oil, gas, and other fluids to migrate between different geologic formations, into aquifers, and/or to the land surface. Unplugged orphan and abandoned wells can also provide a potential route for subsurface methane to escape into the atmosphere, thereby contributing to and increasing levels of greenhouse gases.

For more info: http://www.dec.ny.gov/energy/111211.html



Which way do you want it? Oh... both ways, eh?

From The Executive Director Brad Gill



Don't even think about getting me started about people today… where are all these people who make us shake our heads in disbelief?

In a November 10th Buffalo News Opinion page editorial by Robert Samuelson on Page A11 called "Under-taxed America", he started out by discussing Trump's proposed tax plan (cuts) and then argued that we should have higher taxes by saying "We need higher, not lower, taxes". He went on to clarify his statement by writing, "Americans are under-taxed." He also shared his preference for a carbon tax… no real surprise there, eh? Then for the rest of his diatribe he cited deficit numbers, mentioned government borrowing, talked about baby boomers and Social Security and Medicare spending, and ended by sharing his belief that "We are no longer responsible". So, a higher tax solves the problem of irresponsibility?

By contrast, in October, West Seneca town hall meetings drew a record turnout of residents voicing their frustrations and vehement opposition to a large 12% proposed tax increase in their town. http://wivb.com/2017/10/16/west-seneca-residents-outraged-over-proposed-12-percent-tax-hike/ Waiting lines to get in the door stretched into the street as people waited to vent and be heard that they oppose such a tax hike. Doesn't sound like people agree with Mr. Samuelson that we are under-taxed now does it.

How about this one: Recently, some natural gas utilities and marketers have considered whether or not to provide customers with a clean energy choice… possibly natural gas that is "frack-free". A customer could opt for natural gas that has not been hydraulically fractured (I know, you're asking yourself how that could really work), but that choice would come with a price. I recently heard of a national energy supply company who had created a call center to sell "green energy" to customers who would like that option. As it turns out, in polling potential customers, 85% of U.S. consumers like the idea of a green electric option, but only 4% of those consumers are willing to pay more for it.

All over the news in recent years is the dilemma in which some universities find themselves. How to "appear" to divest from fossil fuels, yet not "really" divest from fossil fuels. They are green in appearance with clean energy standards and lofty enviro-goals on campus, and they promote environmental activist groups on and off campus. But where the rubber meets the road (made possible by fossil fuels), they will not divest their portfolios of fossil fuel holdings.

Ha! I guess convictions only run as deep as the shallowest pockets, whether it's agreeing to pay higher taxes, paying more for energy, or agreeing to walk away from an attractive return on investment.

It's really easy to get the public on board with all of this stuff if you use the right words and spin it the right way. Or, just scare them! In the October 2017 issue of Buffalo Healthy Living magazine on Page 35, there is an article written by Annette Pinder that'll scare the heck out of you if you let it. It talks of the need to remove your shoes when you enter your home because a University of Houston study gives a 26.4% chance that our shoes carry scary, infectious bacteria known as "C. diff". It talks of a host of health problems caused by these bacteria… including death. Then she cites a 2008 University of Arizona study that warns of "421,000 different forms of infectious bacteria on the bottom of shoes" and "96% of the shoes carried coliform bacteria…". Really? I thought it was just my wife yelling at me because she just washed the kitchen floor, but she must know about these hidden dangers and doesn't want me to die (yet). Let's not forget the anti's saying that hydraulic fracturing causes teen pregnancy and methamphetamine abuse. Seriously.

Scare tactics work but also cleverly disguising the motives with softer words works too! How about these for example: "climate change" instead of global warming, gun "safety" vs gun control, "ISIL" instead of ISIS (or Islamic terrorists), "partial birth abortion" instead of killing a baby or terminating a life, etc. This list could go on and on. But then, everything today is about perception… symbolism over substance. Exceptions are used all of the time to portray a norm; hurricanes, tornados and wildfires prove global warming, wind and solar energy are free of negative impacts while fossil

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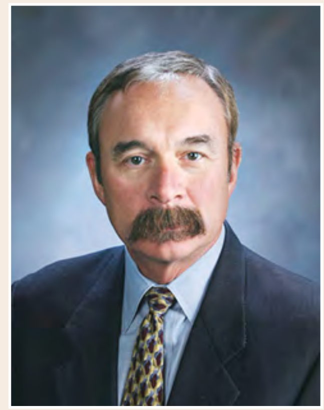
Which Way...continued

fuels are terrible, guns and shootings represent a norm in society vs other deaths that aren't mentioned, religious extremists are painted as the new norm and often associated with an otherwise good and peace-loving societal sector that includes most religious faiths.

These supposedly "newsworthy" stories typify the "gotcha" mentality of the media and many people on social media who jump at the chance to make a story out of something that shouldn't be of interest even on a slow news day. Who cares about Melania's stiletto heels that she wore from the White House to the plane? Is it really terrible that children want to wear a Moana Halloween costume… it should be viewed as flattery toward the Hawaiian/Polynesian culture instead of something negative! Why isn't the word "Chief" as currently used in Toronto's executive business cultures (CEO, CFO, COO, etc.) viewed as complimentary toward native peoples instead of saying that it's derogatory and should be banned – especially when it denotes a position of authority and stature which is the same way it was used, and maybe still is used, among Indian nations today? Historical statues are coming down, history books re-written, and traditional teachings mocked. A Buffalo News opinion piece argues against a WWII stature being erected in Buffalo to dedicate a road and commemorate the fallen because the 1940's soldier is holding a rifle, and that rifle sends the wrong message to onlookers today. Really?

Again, all symbolism over substance. We continue to see the grossly misinformed and hypocritical groups today who hate our industry while at the same time they support us daily, yet never admit that they do. They won't admit to the flaws in their preferred energy sources, like bird and bat deaths by imploding lungs (windmills) and frying heat (solar arrays). They'll continue to use the right words to make themselves and their followers blindly raise the flag of what they believe is free, 100% green energy. We know there is no such thing. We also know that when they realize it, they won't be willing or able to pay for it until huge strides are made to make it affordable. In the meantime, they'll keep burying their heads in the sand… I hope they bury them deep enough to reach the tar sands. Ha!

In Memoriam



On Monday December 11, 2017, after a battle with cancer, Mike Hogan of Hogan Energy Consultants passed away. Mike has been active in the oil and gas industry for many decades, and has been a long-time supporter of IOGANY, serving as IOGANY president in 1993-1994 and a director continually since 1989.

Recently the board of directors voted to bestow the honor of ***Director Emeritus*** upon Mike for his service on the board of directors. A Director Emeritus is a member or former member of IOGANY's board of directors who has not only completed his/her service as director, but has gone above and beyond in carrying out his/her duties by demonstrating extreme loyalty, and dedicating time and energy to the association throughout his/her tenure as director. Mike fit that bill perfectly.

Our appreciation, and our thoughts and prayers go out to Mike's family as he will be greatly missed.

Understanding Energy Markets

By: Gary Marchiori, EnergyMark

November 17, 2017

How Local Utilities Gamed the Natural-Gas Market

By Fred Krupp, as printed in the *Wall Street Journal*, 11/17/17

Mr Krupp is a Yale Educated Attorney and President of the Environmental Defense Fund

Innovators and entrepreneurs are transforming the energy industry. From shale gas to electric vehicles to low-cost wind and solar, so much about the way Americans make and use energy is changing for the better. Yet regulations haven't kept pace. Today a thicket of rules too often stymies innovation and damages the economy.

For example, about a third of the natural gas in the U.S. is used to make electricity, up from 20% in 2010, according to the U.S. Energy Information Administration. But regulations preclude efficient transactions for the fluctuating gas supplies electric generators need to match the daily ebb and flow of demand. This disconnect keeps most power generators from contracting directly with pipelines for gas deliveries, which they instead obtain in secondary markets. There, legacy rules often give local gas utilities, the traditional pipeline customers, outsize leverage. And that can cost consumers and businesses billions. A new study by a team of economists from three universities and the Environmental Defense Fund shows how expensive this obscure anomaly can be.

New England regulators have assumed the region's natural gas pipelines were being used efficiently. Not so. Valuable space was going unused on the busy Algonquin Pipeline, which supplies gas for electricity and heating, even during the coldest days when demand is highest. There was also a persistent gap between the amount of gas scheduled in advance, and the volume that flowed.

The researchers discovered that local gas utilities owned by two companies, Eversource and Avangrid, routinely booked large gas deliveries, then cut orders sharply at the last minute. By then it was too late for anyone else to use the pipeline space, enabling them to limit the amount of gas available to the generators that produce half the region's electricity.

On 37 cold days, when demand was high, unused pipeline space resulting from the scheduling changes represented about 28% of the daily capacity typically used by gas-fired generators, a big number given the dollars at stake.

Econ 101 teaches what happened next: When supply goes down, prices go up. Increases spilled into the wholesale electricity market, boosting average prices about 20% over a three-year period, costing New Englanders an estimated $3.6 billion.

Massachusetts Attorney General Maura Healey is reviewing the findings, Sen. Richard Blumenthal (D.,Conn.) asked the Federal Energy Regulatory Commission to open an investigation on the matter, and both the Connecticut Public Utilities Regulatory Authority and the Massachusetts Public Utilities Department are launching inquiries of their own.

Eversource and Avangrid say their actions were intended to ensure a steady supply to their gas customers. Yet nine other gas utility companies taking gas from Algonquin didn't cancel at the last minute. Whatever their motive, the flawed rules left business and consumers holding the bag.

Developers point to those price spikes as justification to impose the costs of a new $3 billion pipeline on electricity consumers. So far, no electric generator or other large user wants to sign a long-term contract for this capacity, and the developers want their investment to be risk-free. The guaranteed charges to consumers for decades would also lock in gas demand even as cheaper and cleaner sources of energy are gaining market share.

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Understanding Energy Markets...continued

Today's system is stuck in the past. Until 1987, it wasn't even legal for pipelines to sell gas to electric generators, and rules dating to the early 1990s still give electricity short shrift, even though the two systems are now heavily interdependent. Fortunately, conditions are starting to look ripe for reform.

In August, Energy Secretary Rick Perry released a report on electricity markets and reliability that was controversial for many reasons, but which highlighted the need for improved interaction between gas and electricity markets. And some pipeline companies now see profit opportunities in more flexible offerings to generators.

Ultimate responsibility rests with FERC, which sets the rules for wholesale energy markets. Bringing the crucial interface between gas and electric markets up to date is a huge opportunity for new appointees to the commission. Fostering contracts to fit generators' operational needs and improving overall transparency will nurture competition and innovation in the industry, and go a long way toward creating an energy grid that is cleaner, affordable and more reliable.

_______End of WSJ article

Class Action against Two New England LDCs

Further on this subject, a 12 member class action has begun, pitting energy users against the two Northeast US utilities. This from Gas Daily on 11-21-17:

Twelve New England electricity consumers have filed a class-action lawsuit against Avangrid and Eversource Energy, alleging the company's anti-competitive gas pipeline activity resulted in $3.6 billion in overcharges for power, and one industry observer said Monday that similar lawsuits may follow.

Most gas pipeline customers adjust their nominations relatively early in the day and by relatively small amounts, because they face a penalty for making those adjustments, and they can recover at least part of that cost by selling the remaining capacity in a secondary capacity release market.

On days when there may be sufficient demand for a pipeline's entire transmission capacity, that capacity may go partially unused if excess capacity was created through last-minute downward order adjustments by LDCs. This over-reserving of pipeline capacity "artificially inflates" gas prices in real-time power markets.

The Obstruction of Energy Development and Infrastructure: What It Means for New York Landowners and the Economy

By: Tom West, The West Firm, PLLC

Part I – The Pipeline Trilogy

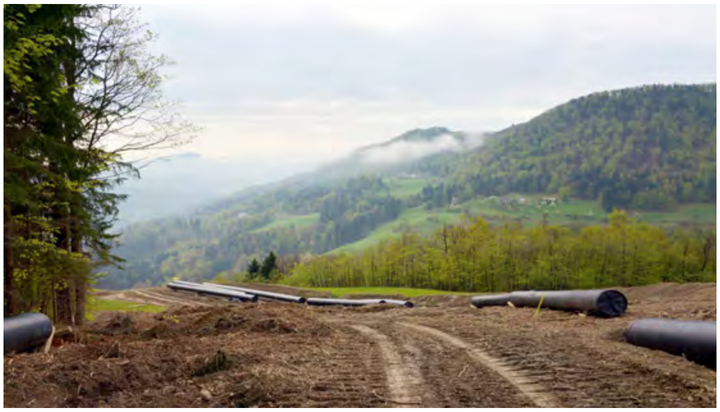
The Cuomo administration, through the New York State Department of Environmental Conservation ("Department"), has dealt a severe blow to industry's efforts to bolster the natural gas interstate infrastructure developed in, or passing through, New York State. The Department recently precluded the construction and operation of three substantive pipeline projects by denying these projects certification pursuant to Section 401 of the Federal Water Pollution Control Act, more commonly known as the Clean Water Act ("CWA").

As a result, even though these projects are highly regulated by the Federal Energy Regulatory Commission ("FERC"), industry has been unable to construct and operate natural gas pipelines that are sorely needed to satisfy the energy demand in the Northeast. These denials by the Department are based upon putative water quality considerations and other environmental factors. Thus far, the courts have been unwilling to rebuke this campaign by the Cuomo administration; but a recent decision from FERC holds out promise that the Department will no longer be able to use administrative delay to frustrate these projects.

The first of the trilogy of adverse decisions was rendered by the Department on April 22, 2016, when it denied Constitution Pipeline Company, LLC's ("Constitution's") Section 401 application for certification for the portion of Constitution's proposed 121-mile interstate natural gas pipeline in New York State. In denying the application, the Department concluded that Constitution's project did not mitigate adverse consequences to streams and wetlands and that a less impactful alternative was available. Notably, Constitution had received all other required federal approvals, including certification from FERC.

Constitution responded with two separate court actions – one in the United States District Court for the Northern District of New York ("Northern District") and one in the United States Court of Appeals for the Second Circuit ("Second Circuit"). The Northern District case challenged the Department's determination that a permit under the State Pollution Discharge Elimination System ("SPDES") program was required. Constitution asserted that the SPDES program was preempted by federal law. On a motion to dismiss, the Northern District denied jurisdiction on the grounds that Constitution had not suffered an injury-in-fact and, therefore, did not have standing to bring the case. As a consequence, the Northern District did not reach the merits of that case.

Contemporaneously, Constitution sought review from the Second Circuit by a petition that challenged the timeliness of the Department's decision and, alternatively, asserted that the Department's decision was arbitrary, capricious and ultra vires, because Constitution had submitted sufficient information to demonstrate compliance with New York State's water quality standards. In a decision handed down on August 18, 2017, the Second Circuit denied Constitution's petition.



Constitution's timeliness argument was premised upon Section 401 of the CWA, which requires decisions on a request for certification within a reasonable time (which shall not exceed one year) after the request for certification. The Second Circuit found that it lacked jurisdiction to consider this argument, stating that the Natural Gas Act ("NGA") accords the United States Court of Appeals for the District of Columbia Circuit ("DC Circuit") exclusive jurisdiction over this matter. Although the Second Circuit found that it lacked jurisdiction to decide the timeliness question, it nonetheless opined that there was nothing in the administrative record supporting Constitution's claim that the Department had been provided all the information necessary for making the Section 401 certification decision.

The Court then proceeded to the merits of the case. After chronicling the Department's numerous information requests to Constitution relative to the need to examine trenchless crossing techniques in streams and waterbodies and the failure of Constitution to respond to those requests in a meaningful way, the Court rejected all challenges on the merits. Specifically, the Second Circuit held that the Department's denial of the Section 401 certification – after Constitution had refused to provide relevant information, despite the Department's repeated requests – was not arbitrary and capricious.

The Second Circuit also observed that, through the Section 401 certification requirement, "Congress intended that the states would retain the power to block, for environmental reasons, local water projects that might win federal approval." Further, the Second Circuit soundly rejected Constitution's claim that it had provided sufficient information to the state regulator – premised on "industry preferences" – finding that so-called industry standards do not "circumscribe environmental relevance" and, therefore, will not render arbitrary and capricious the state regulator's denial based on lack of sufficient information.

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Pipeline Trilogy...continued

Thereafter, Constitution filed a petition for reargument before the entire Second Circuit. Not unexpectedly, the Court denied the petition.

The second denial by the Department in the trilogy relates to the proposed pipeline project by National Fuel Gas Supply Corporation and Empire Pipeline, Inc. (collectively, "National Fuel") to construct a new 97-mile, 24-inch diameter interstate transmission pipeline that would transport natural gas extracted in Pennsylvania and areas in New York to areas within the State of New York, the Northeast and Midwest regions of the United States and Canada. Similar to Constitution's project, the National Fuel project had received all other approvals, including a certificate from FERC. In denying the project, the Department concluded that the application failed to demonstrate compliance with New York State water quality standards. Sound familiar?

National Fuel responded by challenging the Department's determination before the Second Circuit. Oral argument was recently held; however, the prospect for a favorable result remains uncertain given the sound rebuke by the Second Circuit of the Constitution petition.

The final Department denial in the trilogy relates to the proposed lateral expansion of the Millennium Pipeline known as the Valley Lateral Project. This project is a lateral 7.9-mile, 16-inch diameter natural gas pipeline that will connect the existing Millennium Pipeline to the controversial 650-megawatt gas-powered CPV Valley Energy Center in Orange County, New York.[1] This denial presents a new twist. Relying on a decision from the DC Circuit in *Sierra Club v. FERC*, dated August 22, 2017, the Department concluded that the environmental review for the project was deficient for failure to consider downstream greenhouse gas impacts of natural gas use.[2] Thus, this case was decided based upon greenhouse gas issues, not water quality issues.

Interestingly, prior to this decision, Millennium Pipeline Company, L.L.C. ("Millennium") sought review in the DC Circuit based upon the Department's failure to render a timely decision. Like the Northern District decision on the Constitution project, the DC Circuit declined jurisdiction on the basis of standing, but indicated that Millennium could take its timeliness case to FERC to render a final decision on the matter. On July 21, 2017, Millennium did so by filing with FERC a Request for a Notice to Proceed with Construction premised on the contention that the Department had waived its authority to issue a water quality certification under the CWA for the project. The Department objected to Millennium's contention, maintaining that it had one year from August 31, 2016, the date it had received a *complete* certification application from Millennium, to render its decision.

In a decision, dated September 15, 2017, FERC determined that the Department did, in fact, waive its authority to issue a Section 401 water quality certificate for the Valley Lateral project. Specifically, FERC held that the Department had one year from November 23, 2015, when it received Millennium's original application, to render a decision. Having failed to do so, the Department waived its Section 401 certification authority.

Not surprisingly, the Department refused to give up. By a petition to FERC, dated October 13, 2017, the Department requested rehearing and a stay of construction, thus setting the stage for further proceedings before FERC and judicial review. While the Department's request was still pending, FERC issued a Notice to Proceed with Construction. On October 30, 2017, the Department simultaneously requested FERC to stay its Notice to Proceed with Construction and filed an emergency petition with the Second Circuit. In early November 2017, the Second Circuit granted a temporary stay pending full consideration of the Department's petition, but did not decide how long the stay would remain in effect. On November 15, 2017, FERC denied the Department's requests for rehearing and stay. After oral argument on December 5, 2017 before the Second Circuit, the Court, on December 7, 2017, lifted the stay blocking construction but did not rule on the merits. The Court directed accelerated review of the Department's petition and will later make a final ruling on the merits of the petition.

Where does this leave us? As long as FERC's decision as to timeliness stands, it is a definite victory for Millennium, as the decision may ultimately clear the way for the construction of the Valley Lateral Project. It also may provide relief for Constitution, which filed a petition before FERC on October 12, 2017, asserting that the Department had waived its right to object to the project based upon the failure to render a timely decision – namely, within one year from the date the Section 401 application was submitted. The outcome of that petition depends upon how FERC will interpret the several voluntary withdrawals and resubmissions by Constitution of the request for a Section 401 certification as part of the negotiation process between Constitution and the Department. In any event, either the Millennium or the Constitution waiver issue is likely to end up before the DC Circuit.

Regardless of whether there is further judicial review, the utility of FERC's decision on the timeliness/waiver issue for future projects is unclear, because the Department can readily avoid this pitfall by making timely decisions on a going-forward basis. Indeed, the FERC decision notes that the Department can deny the Section 401 application prior to the end of the one-year time limit. Therefore, while FERC's decision will very likely put an end to the Department's persistent delay tactics, this decision will likely not change much in terms of outcome in the New York regulatory landscape. And, so, we remain left in a State where it is difficult, if not impossible, to certificate interstate pipeline projects carrying natural gas that is needed for business development, reduced emissions and national security. FERC's decision is, however, a step in the right direction, but the ultimate relief from the current state of affairs rests with Congress. Amendments to the CWA and the NGA are required authorizing FERC to override state decisions concerning water quality certifications and other environmental issues relative to pipeline projects and other energy-related activities that are in the national interest.

For Part II of this article, please follow the link

https://www.dropbox.com/s/mevti9vr05wkjni/20171128%20Article%20-%20Takings%20Issue%20PART%202.pdf?dl=0

4816-5173-5127, v. 1

[1] The CPV Valley Energy project is controversial because the one-time Andrew Cuomo confidant, Joseph Percoco, is under indictment for his role in that project. [2] Notably, a separate Millennium project regarding upgrades to the existing Millennium Pipeline did receive the Department's approval on August 24, 2017. Presumably, this is because the Millennium Pipeline is an existing facility that received all federal and state approvals in 2006 when the project was originally approved with the involvement of The West Firm.

APPALACHIAN GAS MONTHLY SPOT PRICE

Courtesy: EnergyMark, LLC (716) 632-1800

EnergyMark, LLC
Electric & Gas Supply

	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	Jul-13	Aug-13	Sep-13	Oct-13	Nov-13	Dec-13	Average
Indicative Monthly Price	$ 3.62	$ 3.48	$ 3.75	$ 4.29	$ 4.18	$ 4.16	$ 3.56	$ 3.07	$ 3.30	$ 3.39	$ 3.39	$ 3.47	$ 3.64

	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Jul-14	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14	Average
Indicative Monthly Price	$ 3.94	$ 5.57	$ 4.96	$ 4.55	$ 4.39	$ 3.96	$ 3.61	$ 3.11	$ 3.03	$ 2.92	$ 2.91	$ 3.77	$ 3.89

	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Average
Indicative Monthly Price	$ 2.59	$ 2.58	$ 2.76	$ 2.00	$ 1.90	$ 2.09	$ 1.99	$ 2.04	$ 1.89	$ 1.77	$ 1.87	$ 2.04	$ 2.13

	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Average
Indicative Monthly Price	$ 2.10	$ 1.92	$ 1.46	$ 1.63	$ 1.66	$ 1.70	$ 2.41	$ 1.92	$ 1.88	$ 1.74	$ 1.74	$ 3.04	$ 1.93

	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Average
Indicative Monthly Price	$ 3.99	$ 3.24	$ 2.34	$ 2.91	$ 2.81	$ 2.88	$ 2.35	$ 2.21	$ 2.28	$ 1.82	$ 2.11		$ 2.63

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9/19................$45.48
9/26.................$47.88
10/3................$46.42
10/10..............$46.92

10/17...............$47.88
10/24 .... $48.47
10/31 ....$50.38
11/7 ....$53.20

11/14 ....$51.70
11/21 ....$52.83
11/28..............$53.99
12/5................$53.62

12/12...............$53.14

Source: Ergon Oil Purchasing
www.ergon.com/prices.php

Direct Energy
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NYMEX Natural Gas Futures
12/24/36 Month Forward Strip Average Prices Through 11/20/17
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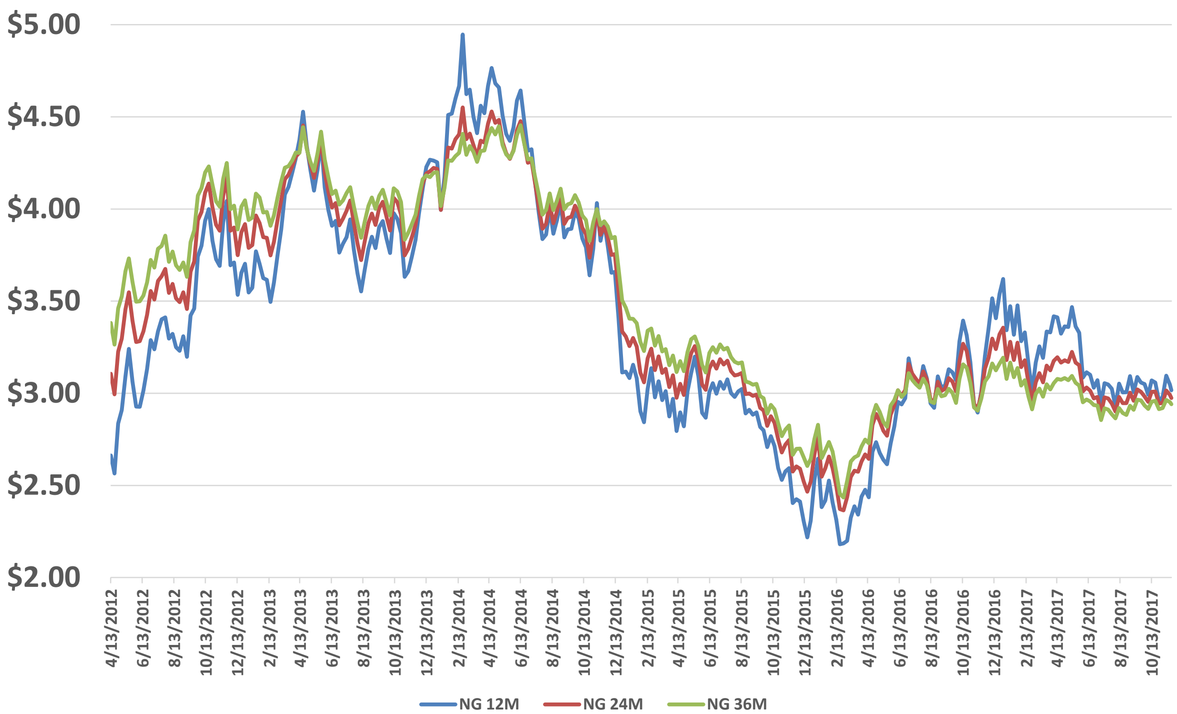

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Use of Blockchain Technology in the Oil & Gas Industry

By: By Nathaniel Lucek, Esq. and Jessica Copeland, Esq. – Hodgson Russ, LLP

Growth in blockchain and other distributed ledger technologies is exploding. Associated mainly with cryptocurrencies such as Bitcoin, the technology is quickly being incorporated into mainstream applications. Each week there is another article about a new application or a new major company adopting the technology across many industry segments. The banking and finance sectors were early adopters, but we are starting to see growth even in the oil and gas industry, and in the latest example, Platts reports that Shell, Statoil, and BP, along with banks (ABN Amro, ING and Societe Generale) and trading houses (Gunvor, Koch Supply & Trading, and Mercuria), are jointly developing a blockchain-based trading platform. In their November 6, 2017 announcement, the participants stated their goal was no less than to "modernize and transform post-transaction management of physical energy commodities trading." As the industry deals with a slower period of recovery, blockchain applications offer promising opportunities for increased efficiency at lower cost throughout streamlined processes in every aspect of the industry's complex operations.

In the simplest sense, blockchain is like a database filled with transactions, such as money or commodity transfers. But whereas a database would sit on a single laptop or server, blockchain is decentralized and distributed throughout a network of computers. Each computer on the network has a copy of the ledger. This eliminates the risk of data loss and can increase data security because no one person can delete or alter the files on every computer in the network.

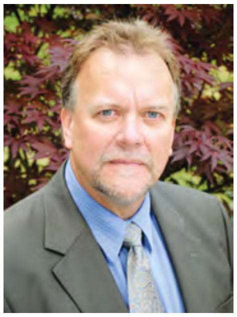
Blockchains provide a transparent, immutable, ongoing record that can easily track assets or products from creation to consumption. In a blockchain, individual transactions are stored on a "block." For each new transaction past what was recorded on the block, a request is sent to the network of computers. The pending transactions are held for a period of time, but these transactions are eventually added to a new block and verified using cryptography. Once verified, the new block filled with transactions is added onto a "chain." Each computer on the network updates its ledger to include the new block. The chronological chain of blocks (or blockchain) provides a permanent and unalterable record of the transactions, which can make it easy to follow transactions, track funds, or audit accounts.

Trading platforms are the latest example of blockchain technology in the energy sector. In May, over 20 European energy trading firms announced a peer-to-peer blockchain-based trading framework and in October, E.ON and Enel completed the first power trade using the system. Trading platforms are seen as a particularly rich environment for deploying blockchain technology. As the BP led group stated, their "intent is to move away from traditional and cumbersome paper contracts and operations documentation to secure, smart contracts and authenticated transfers of electronic documents". For example, the transactions are cleared instantaneously, eliminating settlement risk and associated costs. Increased secure opportunities for peer-to-peer trading could eliminate middlemen and transaction costs. Participants will establish which entities will provide the necessary level of control and data protection, and the platforms will be subject to regulated governance structure, limiting the potential for market abuse. Some of the trading platforms being proposed would use a cryptocurrency such as Bitcoin or Ethereum as medium of exchange, which introduces valuation, tax, and other legal issues. But the use of a cryptocurrency is not necessary to employ blockchain technology in many instances. Further, these platforms can be open to third-party solutions that would augment the platform's features, without loss of security or control.

New applications are being rolled out by start-ups and established players alike. Programs using blockchain technology can calculate and track royalties, track contracts and assess asset performance. As the World Economic Forum has noted, the industry was a leader in adopting digital technologies harnessing big data for "better understanding a reservoir's resource and production potential, improving health and safety, and boosting marginal operational efficiencies at oil fields." Now blockchain technology offers the promise of similar innovations across the entire spectrum of operations.

37th Annual Meeting Recap

From The Executive Director Brad Gill



Last month, IOGANY hosted its 37th annual meeting at Holiday Valley Resort and Conference Center in Ellicottville, NY. This year, we decided to change things up a bit and in consideration of our member's time and budgets, we held a half-day conference starting with lunch and networking before the afternoon talks.

Because of the regulatory issues facing our members today, we decided to host a regulatory forum where four divisions of the New York State Department of Environmental Conservation and a representative from the New York State Department of Public Service (aka PSC) gave presentations on current regulations, pending regulatory proposals and enforcement initiatives.

The talks began with Catherine Dickert; Director of the Division of Mineral Resources sharing an update of the permitting, drilling and plugging activities for 2017, as well as the department's well inspections and regulatory actions. Catherine also reviewed the DEC's web permitting and reporting resources. As you know, Catherine replaced Brad Field after he left, so she is the person with whom we will interact with regularly.

Next, Andrea Skalski; P.E. Environmental Engineer II with the Division of Environmental Remediation reviewed the Petroleum Bulk Storage Regulations and recapped the program now that it has been in place since 2015. She specifically shared insights about new regulations pertaining to above-ground tanks including registration, recordkeeping, operational considerations, installations and closures.

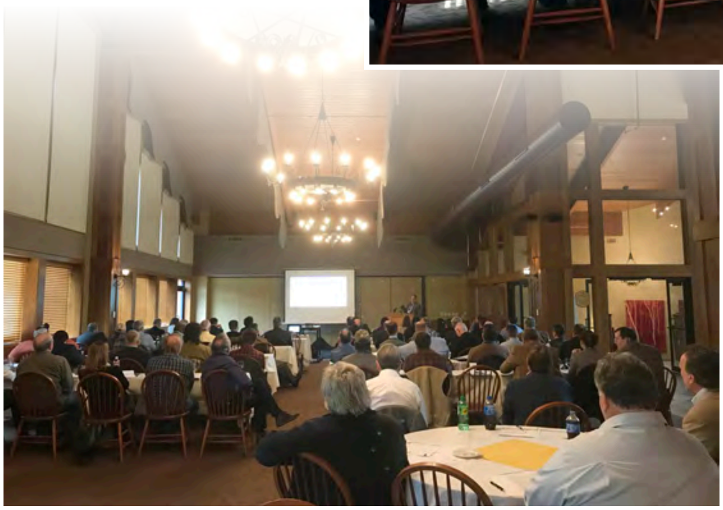
Following Andrea was a presentation by Ona Papageorgiou and Tom Wickerham; both of the Division of Air Resources, sharing insights about fugitive methane leaks and proposed air quality regulations that operators will be expected to comply with. These proposed regs are in the pre-proposal stage and they are soliciting comments from stakeholders, including producers. A series of public meetings are expected to be held across the state for input from interested parties. More information will be provided to IOGANY members as these new proposed regulations materialize.

Next, Melanie Stein; E.I.T. Assistant Environmental Engineer for the Division of Water gave a presentation on SPDES regulations including facility inspections, permit initiatives, terminations and modifications, and water quality limits along with challenges in meeting those limits.

Finally, Kevin Speicher; Chief of the Pipeline Safety Section with the Department of Public Service gave an interesting presentation on pipeline operator audits and inspections, maintenance, odorization, reporting, and he shared insights into what the expectations of the department are regarding operator compliance.

Overall the afternoon sessions were very well received as regulators shared critical insights with operators and producers. Afterward, there was plenty of time for interactive questions and answers from all of the speakers, further enlightening attendees of the regulatory challenges we face.

The day ended with our informal "Beer and Bull" session in the T Bar where folks gathered to network, reminisce, and enjoy a host of libations and excellent food with good friends.



IOGANY 37th Annual Meeting
SPEAKERS

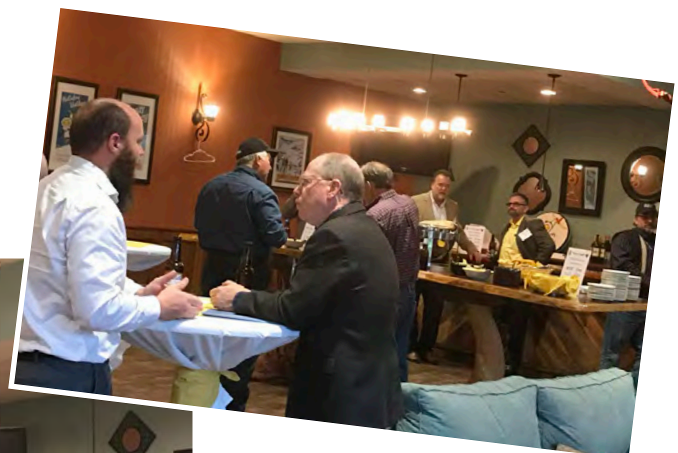
Catherine Dickert, NYS DEC, Division of Mineral Resources

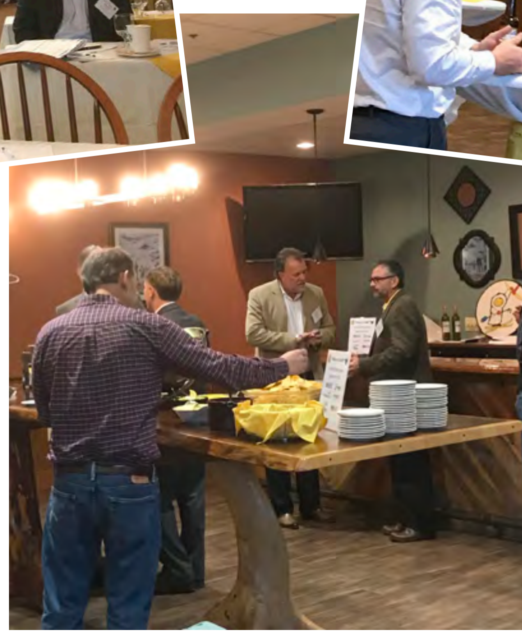
Ona Papageorgiou & Tom Wickerham, NYS DEC, Division of Air Resources

Andrea Skalski, NYS DEC, Division of Environmental Remediation

Melanie Stein, NYS DEC, Division of Water

Kevin Speicher, Department of Public Service, PSC





Thank You…speakers for making this an

informative & well attended meeting!

IOGANY 37th Annual Meeting SPONSORS

"BEER & BULL" COCKTAIL RECEPTION SPONSORS

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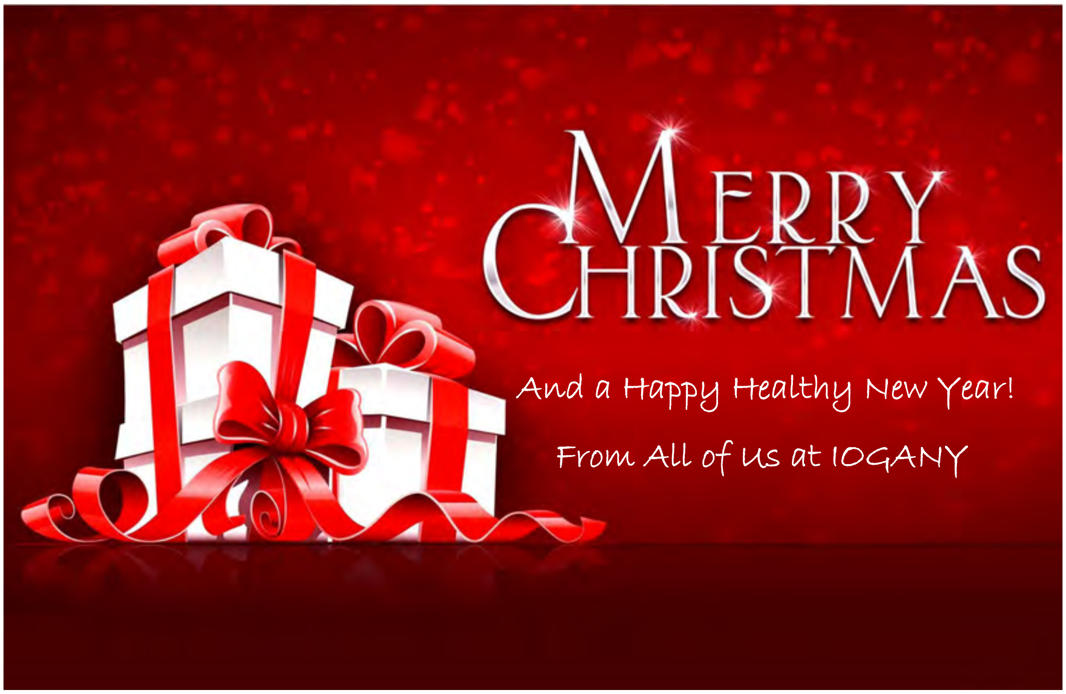


IOGANY Membership Renewals for 2018 Have been Mailed!

Member forms for the directory and advertising opportunities will also be included with your renewal. Please return the form to IOGANY by January 31st, so we have the most current and accurate information for you and your company.

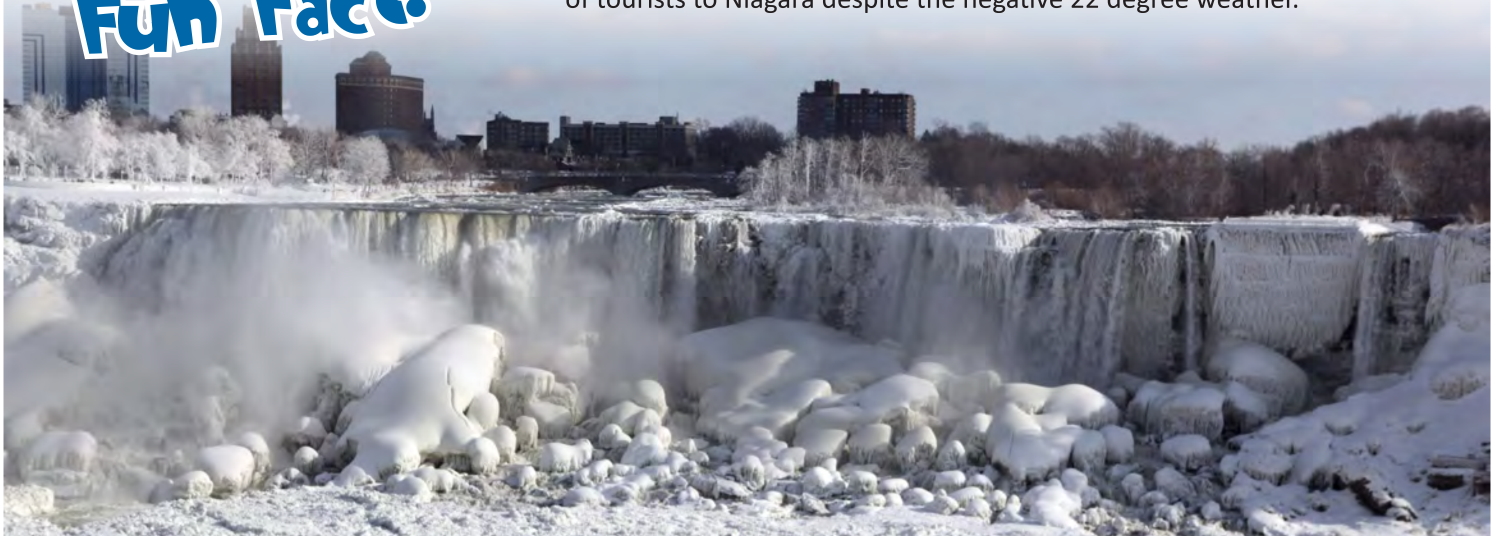
If you know someone that you think might be interested in becoming a member of IOGANY just let us know and we'll contact them!

After we receive the 2018 renewals, IOGANY will compile the information for our 2018 Membership Directory.

We appreciate your continued support of IOGANY!

Winter Fun Fact:

It was so cold in February 2015 that Niagara Falls froze over. According to the Great Lakes Environmental Research Laboratory, Lake Erie was 97% frozen, and the rest of the lakes iced over at 85%, which attracted a lot of tourists to Niagara despite the negative 22 degree weather.



THE PIPELINE

IOGANY
Independent Oil & Gas Association of NY

Our newsletter is published quarterly, and a copy is emailed to each member of IOGANY. Additionally, the newsletter is archived on our website and available at www.iogany.org/resource.php.

Advertiser

Contact Name: ____

Company: ____

Address: ____

City:_________________________ State: ___________ Zip ____________

Phone:_______________________ Email: _________________________

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	Annual (4 issues) Member/Non-member	Per Issue Member/Non-member
☐ Business Card (3.5"x 2")	$200 / $400	$65 / $135
☐ 1/4 page (3.5"x 4.75")	$450 / $900	$135 / $270
☐ 1/2 page horizontal (7.5"x 4.75")	$675 / $1350	$225 / $450
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If choosing "Per Issue", number of issues placing: __________

Total Payment Enclosed: $_______________

Make checks payable to IOGANY. If paying with a credit card, please complete this form on our website (www.iogany.org – Advertise with Us) or contact the IOGANY office. A *3% handling fee will be added to all credit card payments.*

Misc

Include your business card or camera-ready artwork with this form and mail to the address below. Digital files in jpeg format can be emailed to info@iogany.org. If you have any questions, please contact the IOGANY office at 716-202-4688, ext. 100.

Thank you for your order!

38 Lake Street · Hamburg, NY 14075 · phone/fax 716-202-4688 · www.iogany.org

CATEGORIES OF MEMBERSHIP

IOGANY has the following categories of membership:	
Producers:	Those who operate, develop and produce oil and/or natural gas, including producing gas utility companies and integrated oil companies.
Marketers:	Those who purchase or act as agent for producers in the disposition of oil or gas production.
Allied Industry:	Those whose businesses are directly related, or who provide services, to the producing industries such as service and supply companies, oil and gas transmission companies, truckers, sales representatives, purchasers of oil and gas, refiners and non-producing gas utility companies.
Contractors:	Those who independently serve producers in drilling for gas or oil and maintaining or abandoning oil or gas wells.
Professional:	Those who serve the industry in a professional capacity including, but not limited to, accountants, attorneys, banks, consulting engineers, consulting geologists, geophysicists, landmen and surveyors.
Small Business:	Those small businesses with a maximum of two (2) full-time employees.
Individual:	Those individuals with no company affiliation.
Government/Academic:	Those who are employed by any government agency or employed by a university or academic facility as a professional instructor.
Associates:	Those who are employees of member companies in the Producer, Contractor, Allied Industry, Professional, Marketer, or Small Business categories as outlined above.
Landowner-Producer	Those non-oil and gas entities who own property on which one or more gas and/or oil wells are situated, and who are the registered owner of the wells, but are not actively or primarily engaged in the oil and gas industry as their livelihood.
Royalty Owners:	Those private/individual surface land owners who own a corresponding overriding royalty interest in oil or gas production from their land. Not intended for oil & gas industry professionals, companies, corporations, limited liability corporations, sole proprietorships or purchasers of mineral interests.
Student:	Those students at a university or college in an oil & gas related curriculum (i.e. Geology, Engineering, Land, etc.) *Must provide evidence of full time student status.*

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MEMBERSHIP APPLICATION

IOGANY
Independent Oil & Gas Association of NY

FIRST NAME:		LAST NAME:	
TITLE:			
COMPANY:			
ADDRESS:			
CITY/TOWN:	COUNTY:	STATE:	ZIP:
PHONE:	FAX:	MOBILE:	
EMAIL:		WEBSITE:	
PRINCIPAL ACTIVITY IN NY:			DATE:
Do you wish to receive a complimentary American Oil & Gas Reporter subscription? Yes [ ] No [ ]			
Check which emails you want to receive: Important industry issues: Yes [ ] No [ ] Politico: Yes [ ] No [ ] Energy In Depth News Articles: Yes [ ] No [ ]			

MEMBERSHIP CATEGORIES

PRODUCER:	[ ] $ 750.00	minimum (or) $.0048 per Mcf of gas plus $.048 per Bbl of oil produced in NY, whichever is greater. ($37,500 max. producer dues)
Natural Gas Production Crude Oil Production	________ Mcf ________ Bbls	NY State producers must supply the most recent annual production available from the NYSDEC. (Producer dues are assessed to the current owner of the wells)
MARKETER:	[ ] $1,000.00	
ALLIED INDUSTRY:	[ ] $ 750.00	
CONTRACTOR:	[ ] $ 750.00	
PROFESSIONAL:	[ ] $ 750.00	
SMALL BUSINESS:	[ ] $ 260.00	(for sole proprietors with maximum of 2 employees)
INDIVIDUAL:	[ ] $ 225.00	(for individuals only with no business name listed)
GOVERNMENT/ACADEMIC:	[ ] $ 225.00	
ASSOCIATE:	[ ] $ 185.00	(for employees of members)
LANDOWNER – PRODUCER	[ ] $ 175.00	
ROYALTY OWNER:	[ ] $ 120.00	
STUDENT:	[ ] $ 50.00	

If you qualify for two membership categories, dues will be the greater amount with the exception of the Individual category. The Board of Directors reserves the right to deny any membership application and, at their discretion, can terminate membership of any existing member.

NOTE: Membership year is January-December**.** Dues are prorated (March-October) by the number of months remaining in the membership year. Credit card payments can be made by calling IOGANY (3% handling fee applies).

For income tax purposes, 100% of IOGANY 2018 dues may be deductible as an ordinary and necessary business expense, but not as a charitable contribution. 0% of dues paid are considered "lobbying expenses" and are nondeductible.

IOGANY is your industry representative before the New York State Legislature and government. The IOGA of NY Political Action Committee (PAC) enables us to support those candidates who we believe support the natural gas and oil industry in New York. Up to $50 of each primary member's dues may be allocated to the PAC. If you DO NOT want this amount allocated use the check-off box below to decline.

[ ] Do not allocate any portion of my dues to the IOGA of NY PAC. (Signed)____

A corporation may contribute up to $5,000 in a calendar year to a New York State PAC; and individuals may contribute up to $150,000 per year. Please contact your tax advisor for additional details.

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Thank You!

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Board of Directors Meeting

November 2, 2017
Randy Hansen of Elexco Land Services, Inc.

ELEXCO

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THE **PIPELINE** is published quarterly by the Independent Oil & Gas Association of New York as a benefit of membership.