LEGISLATIVE & REGULATORY UPDATE

By Nikolas Tysiak, Legislative and Regulatory Chairman

Just a few cases to report this time.

Property Tax Assessment and Pipeline Valuation

The West Virginia Intermediate Court of Appeals in Lemley v. MarkWest Liberty Midstream & Resources, LLC, --- S.E.2d ---- (2025) established significant precedent for oil and gas transportation infrastructure taxation. The court affirmed the Office of Tax Appeals' application of a 35% reduction in assessed value for 20-inch natural gas liquid pipelines due to economic obsolescence. The court held that external market forces beyond an operator's control, including COVID-19 pandemic impacts, can justify substantial economic obsolescence adjustments when pipelines operate significantly below design capacity.

The decision recognized that beginning in 2018, MarkWest installed 20-inch NGL lines anticipating increased production that never materialized due to market conditions that lessened demand for NGLs and led to scaling back of planned natural gas processing facilities. The court found that calculations showing pipeline utilization at only 28%, 36%, and 47% of design capacity demonstrated that economic obsolescence was necessary to fairly value the pipelines. This represents a significant shift in how underutilized oil and gas transportation infrastructure may be assessed for property tax purposes.

The court also confirmed important procedural changes affecting oil and gas operators challenging property tax assessments. Effective January 1, 2023, the West Virginia Legislature transferred jurisdiction over contested property tax matters from county commissions to the Office of Tax Appeals, establishing OTA as an independent quasi-judicial agency with de novo hearing authority. Most significantly, the Legislature reduced the burden of proof for taxpayers from "clear and convincing evidence" to a "preponderance of the evidence" standard, representing a substantial reduction in the evidentiary burden for oil and gas operators disputing tax assessments.

Compulsory Unitization and Good Faith Standards

In Haughtland Resources, LLC v. SWN Production Company, LLC, Not Reported in S.E. Rptr. (2025), the West Virginia Intermediate Court of Appeals addressed the application of the state's compulsory unitization statute under West Virginia Code § 22C-9-7a. The court established important precedent regarding good faith requirements for operators seeking to force pool non-consenting mineral owners for horizontal drilling projects.

The court rejected the appellant's argument for adopting specific good faith standards requiring offers based on prevailing lease terms with other unit owners, as found in Texas, Oklahoma, and Colorado. The court held that West Virginia Code § 22C-9-7a does not require offers to unitize to be based on other leases or that an applicant disclose its lease terms with other interest owners within a proposed unit. Instead, the court applied the general good faith standard defined by the West Virginia Supreme Court as "an intangible and abstract quality with no technical meaning or statutory definition" that "encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage".

The decision also clarified important limitations on the Oil and Gas Conservation Commission's authority. The court found that the Commission lacks authority to make legal determinations regarding the status of a lease as "leased" or "unleased" in compulsory unitization proceedings, noting that such disputes remain open matters not determined by the Commission in its orders. This limitation preserves contractual interpretation issues for courts with proper jurisdiction over such matters.

Continued

LEGISLATIVE & REGULATORY UPDATE

West Virginia Tax Sale Deed Authority

The West Virginia Intermediate Court of Appeals issued an important ruling in *U.S. Bank Tr. Nat'l Ass'n v. Duncan Homes, LLC,* decided November 13, 2025, establishing that "when tax sale deed is duly obtained and recorded by purchaser of tax sale lien, purchaser is vested with all interest and title to subject property." The court held that parties holding interests in deeds of trust at the time of tax sale were entitled to notice and right of redemption, but once proper procedures were followed, the tax sale conveyed clear title to the purchaser.

Transportation Issues

*East Ohio Gas Company v. Croc*e, 2026-Ohio-75, is an Ohio Supreme Court decision that established the Public Utilities Commission of Ohio's (PUCO) exclusive jurisdiction over claims involving utility tariff interpretation and gas measurement reconciliation processes. The court held that natural gas producers' tort claims against Dominion Energy for allegedly selling excess gas without compensation fell within PUCO's exclusive regulatory authority, even when framed as common law conversion and unjust enrichment claims.

Factual Background and Procedural Posture

Three natural gas producers filed a class action lawsuit against East Ohio Gas Company d.b.a. Dominion Energy Ohio in Summit County Court of Common Pleas, alleging conversion and unjust enrichment claims. The producers participated in Ohio's Energy Choice Program, which allows natural gas customers to purchase gas either from Dominion Energy directly or from independent choice suppliers. All gas from the producers' wells flowed into Dominion Energy's pipeline system regardless of the purchaser arrangement.

The producers alleged that choice suppliers only compensated them for estimated gas volumes communicated through a process called "nomination," while Dominion Energy allegedly sold or benefited from excess gas volumes without proper compensation through the required reconciliation process outlined in Dominion Energy's tariff. Judge Croce granted Dominion Energy's motion to dismiss in part, dismissing the conversion claim under Civil Rule 12(B)(6) but denying the motion as to other claims, concluding that the common pleas court had jurisdiction.

After the Ninth District dismissed Dominion Energy's appeal for lack of finality, Dominion Energy sought a writ of prohibition in the Ninth District against Judge Croce. The Ninth District granted the writ, ordering Judge Croce to cease exercising jurisdiction over the class action on grounds that PUCO had exclusive jurisdiction.

Legal Framework and Analysis

The Ohio Supreme Court applied the established *Allstate* two-part test to determine whether claims fall within PUCO's exclusive. This test examines: (1) whether PUCO's administrative expertise is required to resolve the dispute, and (2) whether the complained-of conduct constitutes a practice normally authorized by the utility. A negative answer to either question suggests the claim does not fall within PUCO's exclusive jurisdiction.

Administrative Expertise Requirement

The court found that resolving the producers' claims required determining whether Dominion Energy correctly carried out the reconciliation process set forth in Section 12 of its energy-choice pooling-service tariff. The court explained that the producers explicitly based their unjust enrichment, conversion, and other claims on Dominion Energy's alleged failure to correctly reconcile the difference between gas volumes delivered into the pipeline system and the choice suppliers' nominations.

Continued

The court characterized the gravamen of the complaint as an allegation that Dominion Energy's measurement or reconciliation practices were "unreasonable, unjust, or insufficient" in connection with services it furnishes. This type of complaint falls directly within the scope of Ohio Revised Code Section 4905.26, which the legislature explicitly placed under PUCO's jurisdiction. The court noted that questions regarding whether there was excess natural gas not covered by the tariff or whether Dominion Energy improperly retained and sold excess gas through incorrect reconciliation processes are matters requiring PUCO's specialized regulatory expertise.

‘Normally Authorized Practice’ Analysis

The court determined that gas measurement, reconciliation processes, and natural gas sales constitute practices normally authorized by utilities. PUCO regulations specifically require utility tariffs to address nomination processes and measurement of delivered gas under Ohio Administrative Code 4901:1-13-14(A)(1) and (4). Additionally, PUCO's approval of Dominion Energy's energy-choice pooling-service tariff demonstrated that these practices fall within normal utility operations subject to regulatory oversight.

The court distinguished this case from property rights disputes involving easement interpretation, emphasizing that the underlying dispute concerned tariff interpretation rather than property rights enforcement. Unlike cases involving easement disputes, the disposition of these claims depended on interpreting a PUCO-regulated tariff governing utility operations.

Solar Power Generation Legal Developments

In re Application of South Branch Solar, L.L.C., –– N.E.3d –– (2025), the Ohio Supreme Court established important precedent for solar facility siting requirements. The court affirmed the Ohio Power Siting Board's approval of a certificate for a 130-megawatt solar facility in Hancock County, rejecting a neighbor's challenge to the project approval.

The court applied the standard that it "will reverse, vacate, or modify an order of the board only when, upon consideration of the record, we conclude that the order was unlawful or unreasonable.” This deferential standard of review emphasizes judicial restraint in reviewing Power Siting Board decisions while maintaining oversight authority.

The decision addressed six key areas of solar facility regulation. First, regarding environmental impact assessment, the court held that sufficient evidence supported the Board's determination of the project's probable impact to wildlife and that the project represented minimum adverse environmental impact. Second, the court found that the Board properly required flood analysis for the facility's project area as part of environmental impact determination. Third, the court approved setback requirements of 300 feet from nonparticipating residences, 150 feet from public roads, and 50 feet from nonparticipating property lines.

Fourth, the court held that sufficient evidence supported the Board's finding that the facility served the public interest, convenience, and necessity, noting the Board identified specific benefits including "generation of zero emission energy, increases in local revenues, including the local school district, and enhancements to the state and local economy.” Fifth, regarding economic impact analysis, the court rejected arguments that applicants must provide analysis of specific negative impacts, finding that rules require only that applicants "provide an estimate of the economic impact on local commercial and industrial activities.” Finally, the court approved the Board's acceptance of a joint stipulation between the applicant, board staff, county commissioners, and farm bureau recommending certificate issuance.

As always, feel free to reach out if you think of anything you think we should be addressing.

Nik Tysiak
Legislative and Regulatory Chair, MLBC