Monday, August 20, 2012

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Environmental LAW

Shifting energy economy: Is fracking inevitable?

By RONALD G. HULL
Daily Record Columnist

"Fracking," as a term of art and as a symbol, has penetrated the public consciousness to an amazing degree. There is, it seems, hardly anyone in Western New York who is not aware of, or has an opinion about, this natural gas extraction technology.

Hydraulic fracturing, or fracking, involves injecting water, sand and chemicals into rock, especially shale formations, to open fissures and facilitate the extraction of natural gas.

The technique has been remarkably successful, and controversial. With the aid of fracking, natural gas production has increased more than 20 percent in the past five years, and reserves of natural gas previously thought to be inaccessible have been found and tapped. The increased availability of natural gas, the cleanest burning fossil fuel, has coincided with increasing concern and regulation over the release of greenhouse gases and toxins from other fossil fuels, and is transforming the nation's energy economy.

The shift from coal and oil to natural gas is easier and more compatible with the existing infrastructure than moving away from fossil fuels altogether to renewable energy sources such as wind and solar, and the ability to map and exploit these reserves of natural gas has added decades to our potential to rely on fossil fuels.

To be sure, all fossil fuels are finite, and reserves of natural gas will, in time, be depleted, but the day of reckoning has been postponed, if the reserves are exploited.

The transition to a natural gas-based energy platform for utilities, industry and homeowners creates a momentum and further dynamic to allow the development of New York state's natural gas resources.

The development of natural gas reserves with the aid of hydraulic fracturing has increased supply and lowered the cost of using natural gas, which in turn spurs more use of natural gas as an energy source. Eventually, supply and demand will come back into equilibrium, but before that occurs the country will be much more dependent on natural gas.

Since 2008, the price of natural gas has fallen more than 70 percent. As a result, there has been a dramatic shift in the balance of energy production with electricity generation from coal expected to decline by 13 percent just in 2012. Because of the economic and regulatory shifts, electric utilities are retiring older coal-fired plants and are likely to fuel new power plants with natural gas. The same transition is under way in other industries.

New federal regulations on coal-burning power plants have tipped the scale even further. Rules promulgated by EPA in 2011 to limit emissions of mercury and to reduce the emissions of sulfur dioxide and nitrogen are an additional factor to retire rather than retrofit coal-fired plants.

The EPA agreed on July 20 to reconsider the new mercury emissions standard due to concerns that the technology is not yet available for new power plants to meet the requirements, but that will not be enough to level the playing field — natural gas is a cheaper, cleaner fuel.

Seeing the shift to natural gas as an unsustainable long-term solution, some environmental groups, such as the Sierra Club, have broadened their goals to move the energy economy away not only from coal, but from all fossil fuels, including natural gas.

The Sierra Club has set its sight on 2050 to end the use of fossil fuels, but the new investment in natural gas-burning equipment and the abundance of supply creates an overwhelming dynamic to continue the transition to natural gas. And to stay with natural gas until the reserves are depleted and the price increases so that other forms of energy production become competitive.

The pressure to tap New York's reserves of natural gas is already great and will increase over time.

The Department of Environmental Conservation will likely complete its environmental impact review of hydraulic fracturing and adopt gas drilling regulations this fall. The odds are that DEC will allow the hydraulic fracturing technology to be used, but with stringent restrictions.

The combination of regulatory conditions and currently low prices for natural gas should pave the way for slower development of wells than would have been the case two years ago, and may postpone resolution of the home rule debate that is currently underway as individual local governments take sides for and against fracking.

Ronald G. Hull is a senior attorney in Underberg & Kessler LLP's Litigation and Environmental practice groups. He has more than 20 years' experience in the areas of environmental and municipal law and litigation.