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## RECENT REGULATORY AND COURT ACTIVITY

Glick and McIntyre Sworn-in, Restoring Full Commission to FERC: On November 2, 2017, the Senate confirmed the nominations of Richard Glick and Kevin McIntyre to serve as FERC Commissioners. On November 29, Glick was officially sworn-in and joined FERC as a Commissioner, and Kevin McIntyre was officially sworn-in on December 7, joining FERC as its Chairman. After McIntyre's swearing-in, Interim Chairman Neil Chatterjee resumed his role as a Commissioner, and a full commission, consisting of three Republicans and two Democrats, has now been established. Chairman McIntyre's FERC bio is [here](#) and Commissioner Glick's FERC bio is [here](#).

FERC Chairman McIntyre Requests 30-Day Extension to Act on DOE NOPR: Soon after being sworn-in on December 7, new FERC Chairman Kevin McIntyre sent a letter to DOE Secretary Rick Perry requesting that DOE grant FERC a 30-day extension to act on DOE's proposed Grid Resiliency Pricing Rule. The proposed rule set an original deadline for FERC action sixty days following publication of the proposed rule in the Federal Register, or December 11. In the one-page letter, McIntyre noted that FERC had received over 1,500 comments on the proposed rule, and had sworn-in two new commissioners within the last two weeks. McIntyre asserted that the proposed extension was critical to afford the new commissioners adequate time to consider the voluminous record and to engage fully in deliberations. On December 8, Secretary Perry granted the request, extending the deadline for FERC action to January 10, 2018. In the letter granting the extension, Secretary Perry urged FERC to act on the proposed rule expeditiously and noted that DOE will continue to examine all options within Secretary Perry's authority to take remedial action as necessary to ensure the security of the nation's electric grid. Read FERC letter [here](#) and obtain DOE response [here](#).

Commissioner Chatterjee Softens Stance on Interim Relief for Coal and Nuclear Generators: Speaking at an event on December 11, FERC Commissioner Neil Chatterjee appeared to soften his stance on the need for interim payments for coal and nuclear generators before FERC issues a final decision with respect to the DOE proposed Grid Resiliency Pricing Rule. As widely reported in trade press, Chatterjee stated that the top priority of FERC is long-term grid resiliency assessment, while noting, however, that plants needed for reliability may prematurely shut down before that assessment is completed. In November, while still serving as Interim Chairman, Chatterjee outlined the key aspects of a potential "show cause" order that FERC would issue requiring regional transmission organizations and independent system operators to

update their tariffs to keep plants online that provide necessary resiliency attributes, or show cause why they should not be required to do so, in an interview with reporters. On December 11, Chatterjee reiterated that he continues to study the possibility of an interim plan while FERC completes the long-term assessment, but that finding a way to support plants without distorting market operations has been the most difficult hurdle.

FERC Approvals of Natural Gas Pipelines Outpace 2016 Levels in Mileage and Capacity: Through October 31, 2017, FERC certificated more natural gas pipeline capacity and mileage during 2017 than it had as of the same date in 2016, according to the Energy Infrastructure Update issued by FERC staff on December 4. As of October 31, 2017, FERC has certificated 23,512.9 MMcf/d of pipeline capacity and 2,507.91 miles of pipeline compared to 14,444.5 MMcf/d of pipeline capacity and 1,137 miles of pipeline from January 1 to October 31, 2016. The increase in both metrics occurred even though the total number of certificated projects as of October 31, 2017 fell from 47 to 38. Among other things, staff also noted that, in October 2017, Port Arthur Pipeline requested authorization to construct its Louisiana Connector Project, which would consist of 131 miles of pipeline that transports 2 Bcf/d of natural gas from St. Landry Parish, LA to the proposed Port Arthur LNG export facility in Jefferson County, Texas, and that NGPL requested authorization to abandon its 18.5 bcf-capacity Herscher Northwest Storage Field in Kankakee County, Illinois due to underperformance. Read [here](#).

Federal Circuit Court Grants Stay of Construction on Portion of Nexus Pipeline: On November 22, 2017, a three-judge panel of the Sixth Circuit of the U.S. Court of Appeals granted an emergency stay requested by the city of Green, Ohio halting construction of an eight-mile stretch of the Nexus pipeline that would run through the city. The city petitioned the Sixth Circuit for review of the 401 Water Quality Standard Certification issued by the Ohio Environmental Protection Agency (“EPA”) that allowed construction to begin on the 257-mile pipeline stretching from northern Ohio to southeast Michigan, and requested an emergency stay while the court considers their petition. The court found that the city persuasively argued that the 401 Certification was improper because certain required procedures were ignored. The court noted that Ohio law explicitly requires the Ohio EPA to perform a wetlands analysis consistent with Ohio Rapid Assessment Method, and that the Ohio EPA conceded that the method was not followed. The court added that the Ohio EPA apparently conceded that it did not study alternative routes to avoid the city and therefore found that the city was likely to succeed on the merits of its petition. The court also found that the environmental harm that the city would potentially suffer if a stay was not granted would be irreparable, a factor also supporting the granting the stay, and that Nexus would not suffer substantial harm because the stay only applied to construction of an eight-mile stretch of the pipeline. The court also noted that review of the city’s petition would be expedited. Read [here](#).

Ohio EPA Sends Letter to FERC Detailing Inadvertent Returns by Rover Pipeline: On December 1, 2017, the Director of the Ohio EPA filed a letter with FERC that it sent to the developer of Rover Pipeline on November 22 detailing a number of violations of Rover’s contingency plan due to unpermitted discharges in Ohio waters as a result of horizontal directional drilling. The letter states that from September 26 to November 16, Rover discharged approximately 1,520 gallons of drilling fluid in wetlands and river waters across three different Ohio townships, and that the Ohio EPA issued five separate Notices of Violation to Rover for the

discharges. The Director highlighted one event that raised particular concern, the discharge that occurred on November 16 in the Black Fork Mohican River in the Milton Township. The director noted that drilling slurry daylighted just below the water line of the river and was located one foot from the riverbank. The Director also noted that several of the discharges occurred near the area where 50,000 gallons of fluid was discharged in April, and recommended that Rover suspend all horizontal directional drilling activity and review its contingency plan. The Director further stated that he found it troubling that the discharges occurred only a few weeks after Rover was allowed to resume construction of the pipeline in Ohio and that the Ohio EPA was requesting that FERC intervene until it can be shown that the horizontal directional drilling activity could be completed without further impact to Ohio's environment. The letter comes after the Ohio Attorney General filed suit against Rover in Ohio state court on November 3, 2017 seeking a court order requiring Rover to apply for certain state permits, to comply with environmental plans approved and ordered by the Ohio EPA, and to pay civil penalties of \$10,000 per day per violation. Obtain letter [here](#) and read lawsuit [here](#).

Consumers File Class Action Complaint Alleging Manipulation of Pipeline Capacity by New England Power Companies: On November 16, 2017, 12 electricity consumers filed a class action complaint against Eversource Energy and Avangrid Inc. in Federal District Court for the District of Massachusetts. The consumers allege, among other things, that the Eversource and Avangrid used their substantial regional market power to restrict natural gas supply and elevate the prices of both natural gas and electricity in New England from 2013 to 2016. The consumers assert that Eversource and Avangrid regularly constrained natural gas pipeline capacity in the region by reserving far more capacity than was necessary, and then adjusting their reservations downward while leaving insufficient time for other pipeline users, including electric generators, to obtain the capacity. As a result, the consumers allege, Eversource and Avangrid artificially inflated the price of natural gas in the real-time markets and subsequently the price of electricity in the ISO New England markets. The consumers assert that the scheme resulted in \$3.6 billion in overpayment by New England electricity consumers alone. Read [here](#).

## **RECENT PGC ACTIVITY**

PGC representatives, David Ciarlone, Terry Lewandowski and Andrea Chambers met with Commissioner Powelson after the PGC Board Meeting on December 5, 2017, and discussed several key topics of importance to the membership. First, we indicated that we encouraged continued pursuit of Section 5 investigations, and noted that these cases are important to bringing customers relief from pipeline overcharges. We also discussed possibly staggering the Section 5 cases by a month or two so that Staff is not overloaded by several cases on the same track. Also, we explained the problem of the lack of refunds from the date of a complaint under Section 5 of the NGA and the need for a legislative fix to allow such refunds. Commissioner Powelson appeared to recognize the significance of this issue, and his Staff asked questions concerning the process and schedule which was encouraging. We also discussed the importance of approving new pipelines and thanked the Commission for working hard to issue such approvals in the face of significant opposition. Additionally, we raised the issue of the gas index price NOPR and the need for sufficient reported trades before bringing his attention to the problems that some of the members have experienced with Platts raising its subscription prices. Again, Commissioner

Powelson seemed very engaged and concerned. Finally, we discussed the statutory change in taxes for corporations and the Notice of Inquiry concerning the Commission's policy on tax allowances for pass-through entities. The Commissioner asked us to explain both and we did so. We did not see much reaction on this issue, but it might have been due to its complexity. Commissioner Powelson also noted his concerns about the Grid Resiliency Pricing NOPR and passed out a study issued on October 27, 2017 by Christina Simeone from the Kleinman Center for Energy Policy at the University of Pennsylvania entitled, *Pennsylvania's Gas Decade - Insight into Consumer Pricing Impact on Shale*, that he recommended we read and indicated that the author of the study would be happy to talk to PGC at our next meeting. Obtain [here](#).

## **ON THE HORIZON**

The monthly membership call for December will occur on December 15, 2017 at 12:00 pm EST. Please use dial in: 1-888-472-4293; and passcode: 7021111#. The monthly membership call for January will be on January 19 at 12:00 pm EST.

The next in-person Membership and Board Meeting will be at DLA Piper in Washington, DC on February 5 and 6. Please be on the lookout for a formal invitation and details for arranging a hotel room.

## **CONTACT INFORMATION**

If you have any questions, please contact Andrea Chambers at 202-799-4130 or via e-mail [here](#).