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RECENT REGULATORY AND COURT ACTIVITY

FERC to Review its 1999 Pipeline Policy Statement: On December 21, 2017, FERC Chairman Kevin McIntyre announced that FERC will review its policies on certifications of natural gas pipelines. McIntyre stated that the Commission will examine the Policy Statement on Certification of New Interstate Natural Gas Pipeline Facilities as part of the pledge that he made during his Senate confirmation to take a fresh look at all aspects of the agency's work. McIntyre added that the format and scope of the review are still being discussed, and that next steps will be announced in the near future. McIntyre also promised a thorough review of the policies and invited comments from all stakeholders. Obtain press release here.

FERC Rejects DOE NOPR on Grid Resiliency Pricing, Initiates New Rulemaking Proceeding: On January 8, FERC issued an order terminating the DOE NOPR on Grid Resiliency Pricing proceeding, instituting a new proceeding, and establishing additional procedures. In terminating the DOE NOPR proceeding, the Commission found that the NOPR did not satisfy the requirements of Section 206 of the Federal Power Act that there be a showing that the existing RTO or ISO tariffs are unjust, unreasonable, unduly discriminatory or preferential, and that any remedy proposed is just, reasonable, and not unduly discriminatory or preferential. The Commission stated that the record in the proceeding, including the comments submitted by RTOs and ISOs regarding grid resilience, did not demonstrate that the RTO and ISO tariffs were unjust and unreasonable. The Commission also noted that the proposed payments to coal and nuclear generators had not been demonstrated to be just and reasonable because all eligible generators would receive the payments regardless of need or cost to the system. Therefore, the Commission stated that the goal of the new proceeding is to develop a common understanding among the Commission, industry, and others of what grid resiliency means and requires, to understand how each RTO and ISO assesses resiliency within its geographic footprint, and to use this information to evaluate whether additional Commission action is appropriate at this time. The order directed RTOs and ISOs to submit specific information regarding the resiliency of their respective region within 60 days, and interested parties may submit reply comments within 30 days after the due date of RTO/ISO submissions. Obtain here.

LNG Terminal Pipelines are Largest of the 2017 FERC Pipeline Requests Remaining Pending: As of January 11, fourteen requests for authorization to construct major natural gas pipeline projects filed in 2017 remain pending before FERC. The two largest projects will be constructed to provide deliveries to LNG export terminals in Louisiana. The Gator Express Pipeline Project, consisting of two co-located laterals, 15.1 and 11.7 miles-long, respectively, will have a single delivery point—the Plaquemines LNG Export Terminal located in Plaquemines Parish, Louisiana—and will have a combined capacity of 3.94 bcf. The pipelines are designed to provide the necessary feedgas for the terminal's peak liquefaction capacity and will be interconnected with the Tennessee Gas and Texas Eastern Transmission pipeline systems. The request for authorization was submitted on February 28, 2017. The Driftwood Pipeline Project will be a 96-mile long pipeline with a capacity of 4 bcf that will deliver feedgas to the Driftwood LNG liquefaction and export facility located in Calcasieu Parish, Louisiana. The pipeline will extend westward to the facility from the proposed interconnection with the Columbia Gulf Transmission pipeline system located near Ville Platte, Louisiana. The request for authorization was submitted on March 31, 2017. Review list of Major Pending Projects here.

FERC Denies Requests for Stay of Construction of Nexus Pipeline: On January 10, FERC denied a request to stay construction on Nexus Pipeline. On August 25, 2017, FERC issued an order authorizing the construction of the 258-mile, 1.5-bcf pipeline from supply areas in the Appalachian Basin to markets in northern Ohio, southeast Michigan, and Ontario, Canada. Requests for rehearing of FERC's order and a stay of construction were submitted by Sierra Club, the City of Oberlin, Ohio, Sustainable Medina County, Neighbors Against Nexus and Freshwater Accountability Project, and Communities for Safe Sustainable Energy. In its request for rehearing and stay of construction, Sierra Club argued that FERC failed to consider the demand for natural gas in the markets to be served by Nexus, noting that 17% of the subscribed capacity has been reserved by wholly owned subsidiaries of DTE Energy, a 50% shareholder of Nexus. Sierra Club also asserted that FERC failed to consider the effects of increased downstream GHG emissions, and that a stay should be granted because Sierra Club members and the public at large would suffer irreparable harm if Nexus were allowed to go forward with construction. The city of Oberlin raised similar claims, and argued that a stay of construction was necessary because Nexus may bring eminent domain actions to secure property needed for the project. In denying the requests, the Commission noted that it does not oversee the acquisition of necessary property rights and that eminent domain matters are issues for the applicable state or federal court to consider. The Commission also noted that Sierra Club's claims did not amount to evidence of irreparable harm because 92 percent of the project is being co-located within existing utility corridors or active agricultural areas, and that the project has been routed to avoid isolated woodlots. Obtain here.

Ohio EPA Sends Letter to FERC Detailing Additional Losses of Drilling Fluid by Rover Pipeline: On January 11, the Ohio EPA filed the second letter in two months with FERC detailing environmental spills caused by horizontal directional drilling operations by Rover Pipeline. The letter, addressed to Rover, stated that on January 10, the Ohio EPA conducted an inspection of the horizontal directional drilling operations under the Tuscarawas River in Stark County in response to learning of the loss of circulation of drilling fluids associated with a pilot drill hole. During the inspection, Ohio EPA officials discovered that 146,000 gallons of drilling fluid had been lost down the pilot drill hole, and three separate attempts to seal the hole to prevent a loss of drilling fluid have failed. The Ohio EPA also requested additional information from Rover, including whether Rover anticipated any improvement with respect to the loss of fluids. The Ohio EPA also inquired at what point will Rover abandon and grout shut the current pilot hole and consider a new point of entry. On December 1, 2017, the Ohio EPA also filed a letter with FERC that it sent to the developer of Rover on November 22, 2017 detailing a number of violations of Rover's contingency plan due to unpermitted discharges in Ohio waters as a result of horizontal directional drilling, and requesting that FERC intervene until it can be shown that the horizontal directional drilling activity could be completed without further impact on Ohio's environment. On December 14, 2017, FERC granted Rover's request to resume horizontal drilling activities at eight locations, including at the Tuscarawas River Crossing. Obtain letter here.

Virginia Sen. Tim Kaine Calls for Rehearing of FERC Approvals of the Atlantic Coast and Mountain Valley Pipelines: On January 5, Virginia Senator Tim Kaine sent a letter to FERC asking the Commission to grant rehearing requests of its approvals of the Atlantic Coast and Mountain Valley Pipelines. FERC issued orders authorizing construction of the Atlantic Coast Pipeline, a 604-mile, 1-bcf pipeline stretching from Harrison County, West Virginia to eastern portions of Virginia and North Carolina, and the Mountain Valley Pipeline, a 303-mile, 2-bcf pipeline stretching from Wetzel County, West Virginia to the Transco Compressor Station 165 in Pittsylvania County, Virginia, on October 13, 2017. Several entities, including the Sierra Club and Virginia counties, filed requests for rehearing of both orders. Kaine stated, however, that he was not taking a position on the substantive merits of the projects, and also requested clarification regarding Commission tolling orders. Kaine stated that in many cases, when a rehearing request is filed, FERC issues a tolling order allowing the Commission to take more than the allotted 30 days to decide the request. He added that even if the original order changes upon FERC's decision on the request, the changes may be moot because construction may have already begun in the interim. Obtain letter here.

State Attorney Generals send letter to FERC Commissioners Requesting Investigation of Utility Rates Following Federal Tax Reduction: On January 9, attorney generals and consumer advocates for 12 states sent a joint letter to FERC commissioners requesting that FERC take prompt action to adjust the revenue requirements of electric transmission and interstate natural gas and oil pipelines owners subject to FERC's jurisdiction. The attorney generals are requesting the adjustments to reflect the recent reduction in the federal corporate income tax rate, and also request adjustment to any other rate/customer impacts associated with the recently enacted changes in federal tax laws. The letter states that the attorney generals are particularly concerned with the level of the current income tax expenses incorporated in public utilities' rates and the balance of excess accumulated deferred income taxes recovered from customers. The attorney generals also acknowledged that many public utilities are subject to formula rates, and asked the commissioners to consider changing the appropriate formulas now, rather than waiting to institute a true-up of actual tax expenses later, to ensure that customers promptly receive the full economic benefit of the tax reduction. The attorney generals also requested that the commissioners investigate the justness and reasonableness of amounts currently held in reserve by public utilities for future tax liabilities. Lastly, the attorney generals noted that state public utility commissions have issued orders requiring utilities to provide evidence of the effect of the federal tax reductions on revenue requirements, as well as to the excess amount of future tax liabilities that utilities are now carrying on their books, and requested that FERC take action at the federal level to ensure that all charges on customers' bills are just and reasonable. Obtain letter here.

Number of FERC Enforcement Investigations Rise for FY2017: On November 11, 2017, FERC's Office of Enforcement released its Report on Enforcement for FY2017. The Report states that FERC enforcement's priorities in FY2017 were the same as in previous years: (1) fraud and market manipulation; (2) serious violations of the Reliability Standards; (3) anticompetitive conduct; and (4) conduct that threatens the transparency of FERC-regulated markets. Notably, FERC's Division of Investigations (DOI) opened 27 new investigations in FY2017, up from 17 in FY2016, and the vast majority of new investigations in FY2017 arose from referrals to DOI from FERC's Division on Analytics and Surveillance. The Office of Enforcement also received 80 new self-reports during FY2017, and closed 121 self-reports without further action, including some that were reported in FY2016. The Office of Enforcement also negotiated five settlements in 2017 that resulted in more than $51 million in civil penalties and the disgorgement of more than $42 million in unjust profits; those figures do not include the settlement reached with Barclays Bank on November 7, 2017 that requires Barclays to pay $70 million in civil penalties and disgorge $35 million in unjust profits for market manipulation practices in the Western energy markets. Obtain here.

Former FERC Commissioner Submits Motions for Partial Summary Judgement in FERC Inquiry on Income Taxes for Pass-Through Entities: R. Gordon Gooch, former FERC commissioner and acting *Pro Se* as a consumer, submitted two motions for partial summary judgment in FERC's Inquiry Regarding the Commission's Policy for Recovering Income Tax Costs proceeding. In the first motion, filed January 2, Gooch argued that, in light of the recent changes to the tax code, the Commission should require all pass-through pipelines subject to the Commission's jurisdiction under the ICA and NGA to recalculate the income tax allowance using the new income tax rates and reduce the resulting calculation by 20%. If the reduction of the cost of service as a result of the recalculation is less than revenues, then Gooch argues that the pipeline must file amended tariffs to bring the revenues down to the level of the cost of service, without prejudice to filing new tariffs after the required tariff goes into effect for five months. Gooch also asserts that pipelines should be required to submit a compliance filing with complete workpapers necessary to substantiate that the rates are "just and reasonable" in that projected revenues do not exceed the revised cost of service. In the second motion, filed January 16, Gooch argued that all pass-through pipelines should net all depreciation, including accelerated depreciation, against the income tax allowance and must repatriate any sums claimed to be accumulated deferred taxes or similar claims as part of a compliance filing. Gooch stated that his second motion was not related to recent changes to the tax code. Gooch cited excerpts filed by several pipelines in rate cases explaining that the amount of taxable income reported by partners of pass-through pipelines often differs from the distribution of cash to partners due to expenses like depreciation reducing the taxable income reported to partners. APGA and Indicated Shippers filed answers in support of these motions. Obtain first motion here and second motion here.

RECENT PGC ACTIVITY

On January 8, PGC sent a letter to FERC Chairman Kevin McIntyre in support of the American Public Gas Association's January 3 request for FERC action on pipeline tax allowances in light of the reduction in the federal corporate tax rate. In the letter, PGC emphasized the fact that transportation rates for jurisdictional pipelines assume an income tax allowance based on a 35% corporate tax rate, and thus pipelines will be over-recovering their costs once the new 21% corporate tax rate becomes effective. PGC also urged FERC to take prompt action to implement rate reductions for consumers.

ON THE HORIZON

The monthly membership call for January will not occur. Our next membership call will be on March 16, 2018 at 12:00 pm EST. Please use dial in: 1-888-472-4293; and passcode: 7021111#.

The next in-person Board and Membership meetings will be at DLA Piper in Washington, DC on February 5 and 6. A formal invitation with details for arranging a hotel room has been sent to all members.

CONTACT INFORMATION

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