



PROCESS  
GAS  
CONSUMERS  
GROUP

Volume 4  
Issue 2  
March 13, 2017

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## RECENT REGULATORY AND COURT ACTIVITY

FERC Continues to Lack Quorum, FERC Staff Continue to Operate with Delegated Authority: Chairman Norman Bay's departure from FERC in early February left the Commission with only 2 out of 5 commissioners; thereby lacking the quorum necessary to take most agency action. Despite the lack of the quorum, acting Chairwoman Cheryl LaFleur has announced plans to keep agency staff active; for example, by convening a staff-led technical conference to address state initiatives and regulations that could undermine wholesale power markets. To date, President Trump has not offered any candidate to fill any of the three vacant commissioner positions; however in March, White House officials indicated that President Trump was beginning to consider nominees. Industry experts have speculated that the vacancies could be filled as early as April or May. Trade press and other news outlets continue to speculate that nominees will include Kevin McIntyre, a partner and head of the energy practice at law firm Jones Day, possibly as Chairman, Neil Chatterjee, top energy advisor to Senate Majority Leader Mitch McConnell (R., Ky.) and Robert Powelson, a member of the Pennsylvania Public Utility Commission. The White House has not commented on such reports.

Kinder Morgan Holds Open Season for Two Pipelines Transporting Gas to the Mexico Border: Kinder Morgan has announced a non-binding open season for up to 230,000 Dt/d of existing pipeline capacity on the Kinder Morgan Border Pipeline and the Kinder Morgan Tejas Pipeline. The Border Pipeline begins at the Tejas Pipeline in Kleberg County, Texas, and continues for 84 miles south to Arguelles, Tamaulipas, Mexico, where it interconnects with facilities owned by Centro Nacional de Control del Gas Natural. According to Kinder Morgan, the open season is in response to continued requests for transportation of natural gas from the U.S. to Mexico.

Natural Gas Supply Association Releases Study Suggesting Over 20 Pipelines Are Exceeding 12% ROE: In February, the Natural Gas Supply Association ("NGSA") announced that in a study of 32 major interstate gas pipelines, 20 of those pipelines are reaching or exceeding an average ROE of 12% or greater. According to the NGSA, it calculated these figures based on the pipelines' Form 2 reports filed with FERC.

FERC Issues Revised Guidance Manual on Environmental Reports for Natural Gas Infrastructure Projects: In February, FERC released a revised guidance manual regarding the preparation of environmental reports for natural gas projects. The guidance, which updates a 2002 guidance statement, recommends that applicants provide data on greenhouse gas emissions

that are both “directly and indirectly” related to the project. This recommendation stops short of what EPA has previously advocated for FERC to do, which was require companies to discuss greenhouse gas emissions stemming from both upstream and downstream activities. FERC’s position in the guidance report has been seen as a compromise between natural gas project developers, who did not want any requirement to consider greenhouse gas emissions beyond those that directly related to the project, and environmental groups, who want FERC to consider the environmental impact of activities such as fracking and increased shale gas production when analyzing the environmental impact of natural gas projects. Read Volume I [here](#) and Volume II [here](#).

House Panel Convenes Hearing on “Grid Digitalization” and Regulatory Approvals for Pipelines: On February 15<sup>th</sup>, the House Energy and Commerce Committee convened a hearing on energy infrastructure. The two major topics discussed at the hearing were “grid digitalization,” *i.e.*, modernizing and updating the electric transmission system in the U.S.; and the regulatory approval process for interstate pipelines. Regarding pipelines, the hearing including presentations by landowners adversely affected by recent pipeline projects and presentations by pipeline developers who discussed numerous route changes that had been made to various current projects in order to accommodate local and landowner requests. Obtain written documents [here](#).

Latest Jordan Cove LNG Export Proposal Enters FERC Pre-Filing Process: On February 10<sup>th</sup>, FERC accepted into the pre-filing review process a new proposal from Jordan Cove developers for an LNG export terminal. According to the developers’ filing, the proposed terminal would be capable of producing 7.8 million mt/year of LNG and would serve markets around the Pacific Rim. In March 2016, FERC rejected a similar Jordan Cove proposal on the basis that the developers failed to a lack of commercial support for the project. Now, the new filing includes several precedent agreements for firm transportation on the Pacific Connector Gas Pipeline. Obtain [here](#).

Environmental Groups Rely on Chairman Bay’s Final Words in Renewed Challenge to the Atlantic Sunrise Project: In the final day before Chairman Bay departed as FERC Chairman, the Commission approved the 196-mile Atlantic Sunrise project, which has been developed by Transcontinental Gas Pipe Line. At the same time, Chairman Bay issued a final statement expressing concern over the Commission’s natural gas pipeline certification policy and suggesting that the Commission should consider broader environmental impacts when reviewing particular infrastructure projects. On February 10th, the Allegheny Defense Project and other environmental groups have requested rehearing of FERC’s order approving the Atlantic Sunrise Project and in support of their request, they are quoting Chairman Bay’s outgoing statement. Obtain [here](#).

## RECENT PGC ACTIVITY

On March 8<sup>th</sup>, PGC filed a motion for leave to answer and answer to Wyoming Interstate Gas’s Request for Rehearing. In WIC’s request, it argued that FERC’s Section 5 investigation exceeded what is permissible under the Natural Gas Act and is based on flawed data. PGC

responded by arguing that each of WIC's arguments have been previously rejected by FERC in other proceedings and that WIC's factual allegations of flawed data must be resolved through an evidentiary hearing. Obtain [here](#).

Also on March 8<sup>th</sup>, PGC filed comments in response to FERC's Notice of Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs. In the comments, PGC established it is inappropriate to include a corporate income tax allowance in the cost of service for pass-through entities and that excluding such an allowance still provides a sufficient return on investment. Obtain [here](#).

On March 6<sup>th</sup>, PGC filed an answer to Natural Gas Pipeline Company's Motion to Hold Proceeding in Abeyance in FERC's Section 5 investigation into NGPL's rates. NGPL moved to hold the entire investigation in abeyance until FERC had a quorum and could rule on NGPL's motion to terminate. PGC argued in its answer that NGPL's arguments for holding the case in abeyance were without merit, that shippers on NGPL would be harmed by any delay, and that if NGPL's motion was not denied outright, it should be referred to the presiding administrative law judge overseeing the case. Obtain [here](#).

Also on March 6<sup>th</sup>, PGC filed a motion for leave to answer and answer to NGPL's Request for Rehearing. In NGPL's request, it argued that FERC's Section 5 investigation exceeded what is permissible under the Natural Gas Act, failed to account for NGPL's financial circumstances, and is based on calculation errors. PGC responded by arguing that each of NGPL's arguments have been previously rejected by FERC in other proceedings and that NGPL's factual allegations must be resolved through an evidentiary hearing. Obtain [here](#).

PGC also held a Board meeting and Membership meeting on February 15-16, 2017 in Miami, FL.

## **ON THE HORIZON**

The monthly membership call for March will occur on March 17, 2017 at 12:00 pm EST. Please use dial in: 1-888-472-4293; and passcode: 7021111#.

The next in-person Membership and Board Meeting will be at DLA's offices in Washington, DC on June 8-9, 2017. 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](#).