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## RECENT REGULATORY AND COURT ACTIVITY

President Trump Officially Nominates McIntyre, Glick; Senate Confirms Powelson and Chatterjee: On August 2nd, President Trump officially nominated Richard Glick and Kevin McIntyre to be FERC Commissioners, for terms expiring June 30, 2022 and June 30, 2023, respectively. Upon confirmation, the President will designate McIntyre as Chairman of the Commission. The Senate Energy and Natural Resources Committee has scheduled a hearing for September 7th to consider Glick's and McIntyre's nominations. On August 4th, the full Senate confirmed the appointments of Neil Chatterjee and Robert Powelson as FERC Commissioners. Chatterjee was sworn-in on August 8th and Powelson was sworn-in on August 10th, officially restoring quorum to the Commission. After they were sworn in, President Trump designated Chatterjee as Interim Chairman until McIntyre is confirmed by the Senate and officially sworn-in as a Commissioner. Chatterjee announced that FERC will resume its monthly open meetings in September, with a Commission meeting scheduled for September 20th at 10 a.m. in the Commission meeting room. He also stated that FERC would resume voting on orders notationally (i.e., voting on orders that can be approved outside of an open meeting), and the first notational order was issued on August 15th. Read [here](#).

With Quorum Restored, Project Applications, Settlements Await FERC Action: With the Commission resuming regular business after a six-month hiatus, a number of major pipeline project applications and pipeline rate case offers of settlement could be approved by FERC in the near future. The \$5 billion Atlantic Coast Pipeline, \$3.5 billion Mountain Valley Pipeline, \$2.2 billion Nexus Pipeline, \$1.8 billion Mountaineer Xpress Pipeline, and \$1 billion PennEast Pipeline all have received their final environmental impact statements from FERC. Therefore, commissioners can now decide whether to issue certificates of public convenience and necessity for these projects pursuant to Section 7 of the Natural Gas Act. While FERC has already issued an order amending a license for hydroelectric dam in recent days, the earliest that the Commission may issue a certificate for any of the pipeline projects might be the September Commission Meeting, which would allow staff to make a presentation to the commissioners and the commissioners to make public statements about the projects. Also, there have been at least 11 settlements filed by natural gas pipeline companies for approval by the Commission since FERC lost its quorum. Northwest Pipeline LLC, which made its initial settlement filing on January 23rd, filed a letter on August 15th requesting that the Commission quickly approve its settlement by including it in the matters that the Commission has prioritized for action.

Wyoming Interstate Company and Natural Gas Pipeline Company File Offers of Settlement in Section 5 Rate Cases: An agreement in principle was reached on all issues in late June, and WIC submitted an Offer of Settlement to the Commission on August 15th. Pursuant to the terms of the Offer of Settlement, WIC may not file a system-wide base rate case to be effective prior to January 1, 2021, and WIC is obligated to file a Section 4 rate case with rates to be effective no later than April 1, 2022. However, in the interim, WIC will be required to implement any industry-wide policies pertaining to statutory changes to income tax rates or changes in Commission policy regarding income tax allowances, as of the dates specified in the industry-wide requirements. Furthermore, nothing in the Offer of Settlement will preclude any party from advocating whatever position it deems appropriate in any Commission rulemaking or policymaking proceeding that discusses industry-wide changes to the Commission's income tax policies. The Offer of Settlement reduces WIC's maximum recourse rate for firm transmission on Mainline, Kanda, and Piceance Lines by 2%, 2.5%, and 1%, respectively. The Offer of Settlement also maintains WIC's existing depreciation rates. Obtain [here](#).

NGPL, Commission Trial Staff, and other parties to the NGPL settlement proceeding reached an agreement in principle on June 14th, and NGPL filed an Offer of Settlement with the Commission on July 24th. The Offer of Settlement provides shippers with a 4.5% reduction in NGPL's transportation and storage maximum reservation rates that were in effect as of April 1st, to be effective on the earlier of the first day of the month following a FERC order approving the Settlement, or November 1st. Pursuant to the Offer of Settlement, NGPL's transportation and storage maximum reservation rates that were in effect on April 1st will be reduced by 6.5% from April 1st rates effective on November 1, 2018. NGPL will also commit to spending \$400 million over the five-year period from January 1, 2017 through December 31, 2021, with a minimum of \$65 million in each individual year, on pipeline integrity-related activities. The Offer of Settlement provides a moratorium that prevents any settling party, including NGPL, from filing to propose changes to the Settlement Rates prior to July 1, 2022, and NGPL must submit a cost and revenue study on or before June 1, 2021 based on actual data from the 2020 calendar year. NGPL may file a Section 4 rate case prior to July 1, 2022 to implement any Commission-mandated industry surcharge. Notwithstanding the above, NGPL is required to implement any industry-wide requirement with respect to a statutory change in corporate income tax rates. Furthermore, nothing in the Offer of Settlement will preclude any party from advocating whatever position it deems appropriate in any Commission rulemaking or policymaking proceeding that discusses industry-wide changes to the Commission's income tax policies. Obtain [here](#).

President Trump Issues Executive Order on Infrastructure Review: On August 15th, President Trump issued an executive order designed to make the necessary environmental reviews and permitting decisions for major infrastructure projects more efficient. The executive order implements a One Federal Decision policy under which the lead Federal Agency works with other relevant Federal agencies to complete the environmental reviews and permitting decisions needed for major infrastructure projects. The executive order also establishes a two-year goal for agencies to process environmental documents for major infrastructure projects. The Office of Management and Budget will establish a performance accountability system and score each agency on its implementation of the executive order. Poor performance will be considered in the agency's budget formulation and could result in the imposition of penalties. The Council on

Environmental Quality will develop and implement an action plan to improve environmental reviews government-wide, and will be able to mediate disagreements between agencies over environmental reviews so that decisions are not delayed amid bureaucratic disputes. Read [here](#).

Sierra Club’s Petition for Review of DOE Approval of Freeport LNG Export Facility Denied by DC Circuit: On August 15th, the D.C. Circuit rejected the Sierra Club’s petition for review of the Department of Energy’s 2014 order granting Freeport LNG Expansion LP’s application to export liquefied natural gas from a facility on Quintana Island near Freeport, Texas, as well as the DOE’s 2015 order denying Sierra Club’s request for rehearing. In its petition, the Sierra Club asserted that DOE did not meet its obligations under the National Environmental Policy Act by not tailoring its review of the indirect environmental effects of export-induced natural gas production. Specifically, the Sierra Club alleged that DOE did not consider how specific levels of export-induced production might impact ozone concentration and water resources. The court rejected the Sierra Club’s argument, giving deference to DOE’s determination that a model estimating localized impacts would be too speculative. Because DOE could not estimate the locale of productions, the court found that an environmental analysis of corresponding local-level impacts would be “more misleading than informative.” The Sierra Club also argued that DOE did not meet its obligations under the Natural Gas Act, which requires that the approval of natural gas exports must be in the public interest. The court again rejected the Sierra Club’s claim, finding that it only raised environmental factors as being inconsistent with the public interest, and that the court had already considered DOE’s environmental analyses under the NEPA claim.

GAO Finds That PHMSA Must Improve Pipeline Safety Inspections Model: On August 3rd, the U.S. Government Accountability Office released a report finding that it is not clear that the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) was effectively prioritizing inspections for the riskiest gas and hazardous liquids pipelines. PHMSA compiles and relies on a Risk Ranking Index Model to rank the relative risk of pipelines and prioritize annual inspections of pipeline operators. GAO’s report found that it is not clear how effectively the model has helped PHMSA manage its inspection resources because PHMSA has not documented the basis for the design and key decisions and has not formally evaluated its effectiveness at prioritizing pipelines for inspection. Specifically, the report found that while PHMSA’s model uses pipeline and corrosion data to determine the frequency of inspections based on certain threat factors and their associated weights, PHMSA did not document a rationale for the selection of the threat factors and the weights assigned to each. The report stated, for example, that PHMSA’s model assumes that longer pipeline segments have greater relative risks than shorter units. GAO recommended that PHMSA compare the characteristics of pipeline segments involved in recent incidents to pipeline segments assigned to each risk tier in PHMSA’s model, and that PHMSA document the design of its model and use data periodically to assess the model’s effectiveness. The Department of Transportation stated that it would provide a detailed response to each recommendation within 60 days. Read [here](#).

## **RECENT PGC ACTIVITY**

On July 31st, PGC and AF&PA jointly filed comments regarding the June 21st FERC Technical Conference on Developments in Natural Gas Index Liquidity and Transparency. In those comments, PGC/AF&PA proposed six actions for the Commission to consider in its efforts to bolster natural gas index liquidity and price formation: 1) strengthening the existing Safe Harbor Policy for entities that voluntarily report transaction data; 2) focusing enforcement actions on those who do not voluntarily report their data as opposed to those who do; 3) strongly encouraging all marketers to report their transaction data; 4) considering whether the data that can be obtained through Form 552 from entities that are not marketers can be submitted in a less burdensome manner; 5) considering the establishment of a government-maintained source of trade data would be prudent; 6) separating the monthly and daily reporting obligations. 13 other entities also filed post-conference comments, with most proposing similar measures to the Commission. Obtain [here](#).

## **ON THE HORIZON**

The monthly membership call for August will occur on August 18th at 12:00 pm EST. Please use dial in: 1-888-472-4293; and passcode: 7021111#. The monthly membership call for October will be on October 20th at 12:00 pm EST.

The next in-person Membership and Board Meeting will be at The Breakers Hotel in Palm Beach, FL on September 18th and 19th. Please see the 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](#).