

Washington vs Washington

Northwest Gas Association
2017 Annual Energy Conference
June 2017

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Updates from Washington, D.C.

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Agenda

- What's going on at the federal level?
 - Presidential Memoranda
 - Executive Orders

- What's going on at FERC?
 - Lack of Quorum
 - Delegated Authority
 - Litigation
 - Other – Technical Conference

Agenda

- What's going on at the federal level?
 - Presidential Memoranda
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- What's going on at FERC?
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 - Delegated Authority
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 - Other – Technical Conference

Federal – Overview

- 90 “Executive Actions” in first 100 days
 - 32 Executive Orders
 - 28 Presidential Memorandum
- Force and effect of law if the action is based on power vested by Constitution or Congress
 - *E.g.*, President Trump’s “Travel Ban” Order

Significant Presidential Memoranda

1. “Regulatory Freeze” Pending Review

- Issued Jan. 20, 2017
- “Freeze” all pending regulations until approved directly by administration or new agency appointees

2. “Made-in-the-USA” Pipelines

- Issued Jan. 24, 2017
- Sec. of Commerce to create plan for US pipelines to use US produced equipment and materials “to the maximum extent possible.”
- All steel and metal products to be produced in US
- March 17, 2017 – Dept. of Commerce “RFI”

3. Dakota Access & Keystone XL Pipelines

- Issued Jan. 24, 2017
- Promotes expedited review and approval
- Keystone XL – received Presidential Permit
- Dakota Access – now operational

Significant Executive Orders

1. Expediting Environmental Review for Infrastructure Projects

- Issued Jan. 24, 2017
- CEQ to streamline environmental reviews of high-priority infrastructure projects

2. Reducing Regulation and Regulatory Costs

- Issued Jan. 30, 2017
- “Two-for-One” for new regulations
- Legal challenge filed
- Codification of E.O.?

3. Energy Independence

- Issued March 28, 2017
- Agencies to review energy regulations issued by the Obama Administration, including the Clean Power Plan
- Litigation over Clean Power Plan and Methane Rule held in abeyance

Significant Executive Orders (cont.)

4. “Buy American, Hire American”

- Issued April 18, 2017
- Agencies to review their policies on using American-made goods in federal contracts, including limiting the use of waivers from the Buy American Act
- Has received significant push-back from industry

5. America-First Offshore Energy Strategy

- Issued April 28, 2017
- Promotes exploration and production in US offshore areas

6. Cybersecurity

- Issued May 11, 2017
- Develop cybersecurity “risk management” strategy for critical infrastructure

Federal Energy Regulatory Commission

- Independent regulatory commission
 - Oversees interstate transmission of electricity, natural gas, and oil
- Composed of five Commissioners
 - Appointed by President, with advice and consent of Senate
 - Each Commissioner serves a five-year term
 - At least three Commissioners are required for a “quorum”

FERC – Lack of Quorum

- No quorum since Feb. 3, 2017
- Two current Commissioners
 - Cheryl LaFleur, Acting Chairman
 - Term expires June 30, 2019
 - Appointed Acting Chairman by President Trump
 - Colette Honorable
 - Term expires June 30, 2017
 - Will not be pursuing another term



FERC – Lack of Quorum

- Two FERC nominees have been proposed
 - Neil Chatterjee
 - Energy policy advisor to Senate Majority Leader Mitch McConnell

 - Robert F. Powelson
 - President of NARUC
 - Served as a Commissioner on the PA Public Utility Commission

- Confirmation Hearing – May 25, 2017

FERC – Delegated Authority

- Statutory time limitations pursuant to NGA and FPA
 - Gas pipeline rate changes – 30 days
 - Rehearing – 30 days

- Codified delegated authority under FERC regulations
 - E.g., “tolling order”

- Feb. 3, 2017 Order
 - Expanded authority delegated to FERC staff
 - May be challenged on rehearing
 - Lifted once FERC regains a quorum

FERC – Delegated Authority (cont.)

■ New delegated authority:

- Accept and suspend filing, subject to refund
- Accept and suspend filing, subject to refund, and set for hearing and settlement judge procedures before a FERC Administrative Law Judge (ALJ)
- Act on uncontested NGA filing seeking a waiver of terms and conditions of tariffs, rate schedules, and service agreements
 - Includes waivers of FERC's capacity release and capacity market rules
- Act on uncontested NGA tariff filings (including rate filings)
- Grant requests for extension of time

FERC- Delegated Authority (cont.)

- Without a quorum, FERC staff cannot:
 - Act on contested rate filings or settlements
 - Act on application for certificates of public convenience
 - Impose penalties in enforcement actions
 - Act on complaint proceedings
 - Act on requests for rehearing (except for issuing “tolling orders”)
 - Act on petitions for declaratory orders
 - Issue proposed rulemaking or policy statements
 - Review initial decisions issued by ALJs

FERC – Challenges to Delegation Order

■ Wyoming Pipeline Authority

- Request for rehearing challenging FERC's Feb. 3, 2017 order
- Withdrew request on March 22, 2017

■ Allegheny Defense Project, et al v. FERC

- March 23, 2017, D.C. Circuit, Case No. 17-1098
- Challenging FERC order granting Transcontinental Gas Pipe Line Co., LLC's application for authorization to construct and operate Atlantic Sunrise pipeline project.
 - April 28, 2017 – FERC filed Motion to Dismiss for Lack of Jurisdiction
 - Upcoming?

FERC – Other?

■ Technical Conference on Natural Gas Index Liquidity

- Scheduled for June 29, 2017
- Participants include:
 - Buyers and sellers of physical natural gas
 - Natural gas pipelines
 - ISO/RTOs or public utilities that use natural gas indices in their tariffs
 - Market monitors
 - Index developers
 - Energy exchanges
 - Academics & market experts

QUESTIONS?

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Administration Impacts on Pipeline Safety

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The Regulator: PHMSA

- Pipeline and Hazardous Materials Safety Administration
 - Jurisdiction: Pipeline facilities and transportation of gas and hazardous liquids in or affecting interstate commerce
 - “In or affecting” includes intrastate pipelines

49 U.S.C. § 60101

State Regulators

- Inspect and enforce regulations for intrastate lines
 - Idaho Public Utilities Commission
 - Oregon Public Utilities Commission
 - Washington Utilities and Transportation Commission
 - Also inspects interstate lines, but PHMSA enforces violations
- Can adopt more stringent standards, but must be consistent with federal

Administration Impacts on PHMSA

- PHMSA Leadership
- Regulatory Initiatives
- New Emergency Order Authority

PHMSA Leadership

- Secretary of Transportation Elaine Chao
- Administrator has not yet been appointed
 - Difficult to finalize rules
- New Associate Administrator for Pipeline Safety Alan Mayberry
- Regional offices continue to conduct inspections and pursue enforcement
- OMB Director Mike Mulvaney and OIRA Administrator nominee Neomi Rao
 - Review costs/benefits of proposed rules

The “two-for-one” executive order

- PHMSA has indicated that it is developing a plan to implement the order
- There is flexibility: an agency may withdraw non-enforceable advisory documents to offset the costs of a new regulation
- There will be a DOT Notice in the Federal Register seeking comment on this soon

Proposed Gas Transmission and Gathering Rule

- The “Mega” Rule proposes significant changes to the regulations for gas transmission and gathering pipelines
- Proposed in April 2016
- Gas Pipeline Advisory Committee has held two public meetings to discuss the proposal

Proposed Gas Transmission and Gathering Rule

- Significant topics include verification of MAOP and pipe material records, strength testing, assessments and repairs, IM, corrosion control, gathering lines
- A final rule will take some time to revise and clear OMB

Underground Natural Gas Storage

- Interim final rule became effective in January
- Incorporates new industry recommended practices: API RP 1170 and 1171
- Makes the recommendations mandatory
- Legal challenges from AGA, INGAA, and the State of Texas

State regulators of Underground Natural Gas Storage

- Idaho Department of Lands, Oil and Gas Conservation Commission.
- Oregon Department of Geology and Mineral Industries
- Washington Department of Natural Resources, Division of Geology and Earth Resources

New Emergency Order Authority

- 2016 Amendment to Pipeline Safety Act
- Temporary Interim Final Rule went into effect in October 2016
 - Authority to issue an order to address imminent hazards
 - Order is not restricted to a particular operator
 - Can affect a wider spectrum of the industry
 - We have yet to see how PHMSA will use this authority
- 2016 Act requires final regulations to be issued
 - Notice and comment rulemaking

QUESTIONS?

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Challenges to Northwest Energy Development

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Challenges to Northwest Energy Development

- Energy Development in the Pacific Northwest will continue to be challenging despite strong support in Washington D.C. due to:
 - Independence of Regional Federal Offices
 - Power of the States
 - Power of the Tribes
 - Power of the Courts

Challenges to Northwest Energy Development - Examples

- Independence of Regional Federal Offices
 - NMFS – Wake Stranding on Lower Columbia
 - USACE
 - Vancouver Energy – NWP to IP; 404 for Filling Steel Piles
 - Gateway – Denial on Treaty Impacts

Challenges to Northwest Energy Development - Examples

■ Power of States

- Clean Air Rule - Chapter 173-442 WAC
- Port of Kalama/Northwest Innovation Works – Kalama – Ecology Shoreline Conditional Use Permit
- Vancouver Energy – EFSEC Process
- New York Denial of 401 Certification for Empire Pipeline

Challenges to Northwest Energy Development - Examples

■ Power of the Tribes

- Cultural Resource Issues
- Treaty Rights
 - Interference with Fishing at Usual and Accustomed (U&A) Places
 - Habitat Impacts (“Culvert Decision”)

Challenges to Northwest Energy Development - Examples

■ Power of the Courts

- U.S. v Washington – 9th Cir.
 - Affirming Treaty right to supply of fish, not just fishing
- Deschutes River Alliance v. Portland General Electric Company – Oregon District Court
 - Affirming Citizen Suit Challenging 401 Cert. Compliance
- Tulalip Tribes v. John F. Kelly (Filed April 25, 2017)
 - Claiming Coast Guard failed to consult with NMFS about potential impacts on Southern Resident Killer Whale population from shipping traffic in Puget Sound

QUESTIONS?

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