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PERSPECTIVE: Gas Industry Wary as Energy Policy Shifts Toward Executive Branch, Courts

At this month's North American Gas Forum (NAGF) in Washington, industry officials and analysts were less than thrilled with how US policy is developing as it relates to natural gas.

With Congress having abdicated its responsibilities and handed most energy policy decisions to the executive branch -- and hence to regulators -- the sector faces mountains of litigation and an abundance of business uncertainty, participants said at the event organized by Energy Dialogues.

In terms of gas infrastructure projects, developers and their opponents "litigate, litigate and relitigate" at a huge cost, said Jeff Berkowitz, CEO of energy consulting firm Delve.

Administrative policy decisions are much more easily challenged in court than laws passed by Congress. As a result, groups like the Sierra Club have sued to block every US LNG project and many gas pipelines, usually based on vague standards as to whether or not an environmental review was "adequate" or "sufficient."

"There has been a shift to the administration and a shift to the courts," agreed Mike Catanzaro, a partner of the CGCN Group, a Washington-based lobbying firm. Little meaningful legislation has come out of the legislative branch, and, as a result, policy affecting everything from hydraulic fracturing to methane emissions swings from president to president, which creates a great deal of instability. "Congress really needs to step up," he said.

Kevin Book, managing director of ClearView Energy Partners, agreed. "Ripping rules up is great PR, but you're leaving a void, and the next administration may be different," said Book, noting that the gas industry has grown rapidly in the last decade and has become a political target.

Charlie Riedl, executive director of the Center for LNG (CLNG), told Energy Intelligence after the conference that the shift in power away from Congress started long before the current administration. But Riedl said the Trump White House's mode of operation creates jitters. "The administration doesn't telegraph anything, signal what they're going to do next," he said. "What they've added to it is unpredictability."

For example, Riedl said President Donald Trump's trade battle with China -- which has resulted in tariffs and countertariffs on LNG exports -- makes decisions on whether to move forward with multibillion-dollar liquefaction projects harder to reach ([NGW Aug.6'18](#)).

The trade issue is "incredibly important" to CLNG, which wants it "resolved as quickly as possible," Riedl said. "There will be little pockets that we can come to agreement on; hopefully, LNG is one of those things."

On the regulatory front, CLNG is pleased with the recent Federal Energy Regulatory Commission (FERC) schedules for acting on about a dozen LNG export projects ([NGW Sep.10'18](#)). CLNG is also "cautiously optimistic" about the memorandum of understanding (MOU) between FERC and the Pipeline and Hazardous Materials Safety Administration (PHMSA), a key part of FERC's recent effort to speed up project approvals ([NGW Oct.15'18](#)).

Yet even FERC Commissioner Cheryl LaFleur was skeptical of the MOU with PHMSA, telling the NAGF that the

"proof will be in the pudding" and that FERC will do its best to work with the pipeline safety regulator.

On a related front, Riedl believes the US LNG industry should be comfortable with the Department of Energy's (DOE) process of certifying that LNG exports are in the "public interest."

"At this point, the precedent has been set by the DOE and the courts. Another administration would have a difficult time making an argument that would shift the direction in which the DOE has been going," Riedl told Energy Intelligence.

But he hopes the DOE is finished studying the economic impact of US LNG exports, including whether they unduly increase domestic gas prices. The most recent economic study "reconfirmed what the previous study reconfirmed ... we didn't think the last study was necessary, but we were not surprised by the result of the study at all."

Nevertheless, CLNG would still like to provide business certainty with a codified DOE approval time frame. "We haven't stopped pushing for that," he said, but tariffs "have sucked all the oxygen out of the room."

The politics of gas have moved down the chain to the state level, where pushback against fossil fuels is changing policy even in some of the reddest states. Berkowitz cited an Arizona ballot initiative that would require 50% of power generated in the state to be from "clean energy," including gas. Before the ballot initiative could be voted on, the state legislature moved to a requirement for 80% of power from clean energy, and without gas.

This is another illustration, he said, of why the gas industry needs to "reintroduce itself to the public."

Michael Sultan, Washington