

LaFleur Sees Risk of Gas Pipeline Overbuilding, Comments on Four Commissioner Dynamic

October 16, 2018

Amid legal challenges to most natural gas pipeline certificate orders from FERC and uncertainty on federal policy regarding climate change, “our work on pipelines is getting harder,” Commissioner Cheryl LaFleur said October 15 in a speech at the North American Gas Forum.

LaFleur addressed FERC’s assessment of gas pipeline applications and its environmental reviews under the National Environmental Policy Act, including the ongoing review of FERC’s certificate policy statement. The policy statement and implementation of it considers precedent agreements as an indication of long-term need for new pipeline facilities.

If that continues to be the case, “there is a significant risk of pipeline overbuilding,” LaFleur said. That possibility of overbuilding was a factor mentioned for consideration by FERC in the 1999 policy statement, but it has not been a theme in most of the cases FERC has addressed in the last 15 years.

FERC has taken comments on the policy statement and possible changes to how it reviews pipeline applications, but the next step and timing of it is not known. FERC Chairman Kevin McIntyre may want to wait until there is a fifth commissioner at FERC for such a major policy initiative, LaFleur said, referencing White House nominee Bernard McNamee, currently at the Department of Energy.

Speaking with reporters after her remarks at the conference, LaFleur said it would not surprise her if McIntyre waited for the fifth commissioner to be seated at FERC before any action on the certificate policy statement. McNamee, who is likely to face opposition from Senate Democrats for his policy views favoring fossil fuels, had the confirmation hearing postponed by the Senate Energy and Natural Resources Committee until mid-November.

“I’ve only met him once,” and every commissioner comes with their own background and perspective on issues, LaFleur said. If McNamee is confirmed by the Senate, LaFleur said she is quite sure she will work well with him, adding that there has not been anyone she has not worked well with during her eight years as a commissioner, including a few stints as chairman.

She declined to give any views on the White House selection of McNamee. “I have so many things that I’m responsible for, but picking new commissioners is not one of them,” she quipped.

With the seat of former Commissioner Robert Powelson vacant since August, FERC has had two Democrats – LaFleur and Richard Glick – and two Republicans – McIntyre and Neil Chatterjee – addressing orders. Energy infrastructure proponents have been concerned about a possible backlog of orders if LaFleur and Glick hold out on pipeline approvals, but LaFleur aims to minimize that possibility. “Nobody wants backlogs,” she told reporters.

Even so, observers can see from dissents in pipeline cases where she and Glick differ from McIntyre and Chatterjee, in terms of environmental analysis, use of the social cost of carbon tool, and assessment of greenhouse gas emissions for pipeline projects. “I think you can see from some of the recent dissents where lines have been sharply drawn, the kinds of things that might be presage that there will be disagreements on. I think it’s incumbent on us to try to work through those” issues, she said, noting that she has been at the commission with four commissioners at different times in her tenure.

LaFleur said she tries to explain in her dissents exactly what she views as the disagreement and what

she would like to see change from the majority view. Because the federal government is stepping further away from climate change issues, it is leaving more for states to address and FERC, “to our dismay” is debating those issues in individual pipeline cases, she said in her remarks at the conference, sponsored by Energy Dialogues.

FERC is not the best entity that should be making environmental policy decisions “but we are finding it in our dockets nonetheless,” she said.

Within that debate is a “complex” relationship between natural gas and climate change, with positives and negatives, depending on your perspective, LaFleur said. The increased use of renewable resources for generation creates a need for the use of gas-fired generation due to its fast-ramping operating characteristics to help with the intermittent output of solar and wind power generation facilities. The power grid is getting more dynamic and using more variable resources, which, along with the low commodity cost of natural gas, favors more use of gas-fired generation.

That has helped the country lower GHG emissions as coal-fired generation is retired, but natural gas has its own environmental issues as a fossil fuel and methane leaks along the production and pipeline network, LaFleur said.

FERC is working its way through environmental reviews of LNG export facilities, with a recent memorandum of understanding between FERC and the Pipeline and Hazardous Materials Safety Administration designed to improve the process. As was mentioned during the September open meeting at FERC, LaFleur said the commission will need to ensure it does not compromise the stakeholder process of gaining input from different entities. “If you don’t put in that time up front it will come back and haunt you” in legal challenges to project approvals, she said. “It is incumbent on us to make sure our process is strong and robust.”

One of the issues in the backdrop of FERC’s environmental reviews is that production centers have changed over the past 10 years, with more pipeline infrastructure being built in parts of the U.S. that are not accustomed to or supportive of new energy facilities, LaFleur said.

Turning back to the certificate policy statement review, she said the broad review is needed and she appreciates the comments received. “I can promise a full and fair and open discussion,” she said.

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LNG Project Owners Trying to Secure Buyers, Tout Advantages, Deal with Steel Tariffs

October 16, 2018

The dichotomy of having an advantageous position globally for selling natural gas from the U.S. while facing higher costs due to steel tariffs is among the issues facing LNG export project developers, speakers said at the North American Gas Forum October 16.

Lawmakers from Congress offered almost no hope that the steel tariffs and the Trump administration's trade dispute with China will be resolved anytime soon, and no chance for legislation to improve pipeline siting as a stand-alone bill on state use of the Clean Water Act (CWA).

Pipeline siting and the use of gas storage to address the varying output from LNG export facilities is becoming increasingly important for export project developers, said Octavio Simoes, president and CEO of Sempra LNG & Midstream.

Sens. John Barrasso (R-Wyo.), Shelly Moore Capito (R-W.Va.), Steve Daines (R-Mont.) and James Inhofe (R-Okla.) in July introduced legislation to modify Section 401 of the CWA to limit states' ability to use the water quality certificate process as a veto against pipeline facilities, which has been an issue in New York state. The measure will not attract 60 votes if it is tried to move as a stand-alone measure in the Senate, Sen. Bill Cassidy (R-La.) said at the conference. Sen. Charles Schumer (D-N.Y.) and minority leader in the Senate, would not allow the bill to move forward on a stand-alone basis, Cassidy said.

A similar view from the House of Representatives was provided by Rep. Greg Harper (R-Miss.), who is not running for re-election and praised the Trump administration's policies favoring more gas use and improvements for U.S. manufacturing. Mississippi is home to one prospective LNG export project and officials are a bit jealous of the success Louisiana has had in attracting investors for new projects, Harper said.

Congress is not very popular, but lawmakers are trying to ensure that regulations and statutes do not get in the way of market advances and use of new technologies, Harper said. For LNG project developers, exemptions from the steel tariffs for any purchases are possible from the Department of Commerce, and how that plays out remains to be seen, he said.

The administration's goal with the tariffs is to save the steel manufacturing industry in the U.S., and officials are aware of the detrimental impact the tariffs are having on some sectors of the economy, Harper said.

China is responsible for a glut of steel in the global market and even though there is going to be pain associated with the tariffs, the administration is expected to maintain them to help U.S. manufacturers, Cassidy said. "I see continued tension with China" in the near term, with no clear time frame for when the trade dispute will be resolved, he said.

Addressing FERC and its approval of LNG project environmental and safety issues, Cassidy said he's pleased with the Commission's position at this point after he and others sought some assurances from Chairman Kevin McIntyre about the review process. The Senate confirmation hearing for FERC nominee Bernard McNamee has been postponed, but Senate Majority Leader Mitch McConnell (R-Ky.) understands the importance of having appointee positions filled while a Republican majority is in place in the Senate, Cassidy added.

Among trade issues affecting the gas industry, Cassidy said he is more concerned about the reworking of the North American Free Trade Agreement regarding pipeline contractors working on facilities to send

gas to Mexico that could endanger smaller companies that are subcontractors. Congress has a chance to address the issue to provide better protection for subcontractors when it reviews the reworked trade agreement, he noted.

China is using more and more natural gas, and much of the long-term growth for the fuel is for LNG purchases from the U.S., many speakers said during the conference, sponsored by Energy Dialogues. Asia is consuming 75% of all the LNG being used in the world today, and much of the growth in the coming years will come from China and India, said Meg Gentle, president and CEO of Tellurian Inc., which is developing the Driftwood LNG export project and pipeline infrastructure. “We see inelastic demand starting to form” in the transportation sector with natural gas vehicles in some countries and substitution of gas for propane heating in residential and commercial markets, Gentle said.

The U.S. currently has two LNG export projects operating, with others under construction, such as the Corpus Christi LNG facility and Freeport LNG facility. “Watch what happens next year,” when the LNG export capacity will move from about 4 Bcf/d to 10 Bcf/d, indicating that “this is a really amazing time” for the LNG industry, said Fred Hutchison, president and CEO of the trade group LNG Allies.

Some members of LNG Allies are “incredibly concerned” about steel tariffs while others believe they may not have a huge impact on their business, Hutchison said.

For project developers, the low cost of natural gas in the U.S. and abundant supplies are among the positives, but LNG shipping ports are a bit removed from production centers, making pipeline investments a key element, said Simoes. Access to storage also is important because of variations in demand, need and management of gas supplies for LNG project developers, he said.

With the exception of the trade dispute with China, the political stability in the U.S. is a positive selling point for reaching deals with LNG buyers, Gentle said, referring to less stability in Qatar and Algeria.

A trend toward shorter term contracts for LNG purchases will be managed for companies to reach final investment decisions, according to Greg Vesey, CEO and managing director at LNG Limited. Despite headlines about moves toward spot market contracts, “we’ve seen a lot of support for long-term contracts,” Vesey said. He views the optimal contract portfolio for LNG project developers as 40% under long-term contracts, 40% under three- to five-year contracts and 20% under spot market purchases.

The separation of natural gas prices globally from the price of oil is a positive trend, Vesey and others said. Compared with volatile gas prices at the Henry Hub in years past, the stability of gas prices in the U.S. is a strong selling point, panelists said.

The price spread between global LNG prices and Brent oil prices is widening, which is another favorable factor for U.S. suppliers, said Gentle.

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Pipeline Constraints, Water Concerns, Lack of Policy Direction from Congress Addressed

October 15, 2018

The energy sector has been subject to the policy whims of different presidential administrations, with federal agency directives and the courts' interpretation of those directives playing a larger role than Congress, a former White House energy staffer said during a panel at the North American Gas Forum.

"Congress is not passing energy legislation in any meaningful way," so the policies affecting the oil and natural gas industry reflect pendulum swings from administration to administration, said Mike Catanzaro, partner with CGCN Group. Catanzaro served as an energy and environmental policy advisor in the Trump White House and noted that the administration's energy policies were outlined in executive orders and federal agency decisions, which have been subject to legal appeals in the courts.

Steps to improve the federal permitting of infrastructure will take time to sort out, especially if Congress does not step up and pass legislation to improve pipeline permitting and limit states' ability to use the Clean Water Act (CWA) to block infrastructure, other speakers said.

In the last 12 months, more natural gas demand has come about than new supplies, but pipelines have had a tough time gaining permits for new facilities, with New York state denying water quality permits under the CWA, noted Chad Zamarin, senior vice president at The Williams Companies Inc.

"We're not asking for less regulation, just timely regulation," added Clay Bretches, president and CEO of Sendero Midstream. As a company with operations in the Permian Basin, where production is booming and oil and natural gas pipeline takeaway capacity is constrained, "we'd like to see some consistency in timelines" for gaining permits, Bretches told the gathering, put on by Energy Dialogues.

Williams' Transcontinental Gas Pipe Line has gone through major expansions and shifted gas flows to move more gas out of the Marcellus Shale and Appalachian region over the last several years, but the next steps for pipeline additions will be costlier and more challenging, Zamarin said. "We're running out of the low-hanging fruit" that includes expansions through compression and minimal new pipeline rights-of-way, and the newer expansions – including in Texas to address Permian production – will involve greenfield construction that is more expensive, he said.

Some facilities will be intrastate pipelines to move more gas or oil within Texas, so the regulatory burden for those facilities will be lighter, speakers commented.

Without adequate pipeline infrastructure to transport natural gas associated with oil production, producers are turning to flaring, with different state rules between Texas and New Mexico, along with the disparity between high oil and low natural gas prices affecting producer strategies, panelists said.

For every one barrel of oil produced in shale plays within the Permian, four barrels of water are produced that require disposal, reinjection in underground wells or treatment for subsequent industrial use, Bretches said. This has resulted in serious concerns about trucking of water resources, transportation along "the Death Road" and litigation about water rights of landowners if the water is sold and disposed of at a profit by producers, other speakers noted. "There are thousands of trucks moving water and oil" out of the Delaware Basin within the Permian, Bretches said.

The Groundwater Protection Council, a collection of state regulatory agencies, will be releasing a report in the spring of 2019 on water resource issues and challenges associated with disposal related to oil and natural gas production, said Dan Yates, associate executive director of the council. The group is trying to collaborate with producers and others about finding the best middle ground on enabling production,

ensuring environmental protection and clean drinking water, with information provided to the public on various efforts.

Funding can be an issue for state regulatory programs, but any time the industry can work on use of non-freshwater resources for their production needs it can be positive for all stakeholders, some of whom have different perspectives, Yates said. The less water that is injected back into the ground the better for environmental protection and water safety, with the upcoming report examining the economic issues and other factors in different states, he said.

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