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CFTC-FERC pact leaves jurisdictional issue unsolved

By JEFF BEaTTIE

Resolving mostly procedural issues but not the basic jurisdictional fight, the Federal Energy Regulatory Commission and the Commodity Futures Trading Commission inked Thursday two long-sought agreements creating new and precise procedures for attempting to mediate jurisdictional disputes and for sharing information helpful to both agencies in conducting market manipulation inquiries.

The memoranda of understanding (MOU) were signed by acting FERC Chairman Cheryl LaFleur and then-CFTC Chairman Gary Gensler on January 2, the day before Gensler departed the CFTC.

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Murkowski calls on Obama to lift u.s. ban on petroleum exports

By CHrIs HOLLy

Warning the prohibition threatens the vitality of the U.S. oil boom, Sen. Lisa Murkowski Tuesday called on President Obama to lift the decades-old U.S. ban on oil and condensate exports, saying the president has authority to lift the ban through executive orders but if he fails do so she will introduce legislation herself to end the prohibition.

In a speech at the Brookings Institution, Murkowski (Alaska), the Senate energy panel's senior Republican, said that lifting the export ban will boost already burgeoning U.S. petroleum production even further by expanding market opportunities for producers, and that the entry of new U.S. oil into the global petroleum market will reduce global prices, benefitting U.S. consumers.

Critics of lifting the export ban say that producers want to export U.S. oil simply to boost their profits—not to benefit consumers. They note that U.S. production still accounts for less than half of American consumption, and assert that lifting the export ban would allow producers to get a higher price for their oil on the international market—a price that U.S. refiners and consumers also would have to pay.

It is no surprise that Murkowski, long an oil and gas industry champion, is calling for lifting the ban, a top priority for an industry that has contributed nearly $660,000 to her political campaigns over more than a decade, according to the Center for Responsive Politics.

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NGSA taps Ballard Spahr partner Wiggins as new CEO

The Natural Gas Supply Association announced Tuesday that its board of directors has approved Dena Wiggins, a partner at the law firm Ballard Spahr LLP, as the incoming president and chief executive officer of the trade group representing independent and integrated natural gas producers.

Wiggins will join NGSA in late February and replace current President and CEO Skip Horvath, who plans to retire in the spring after 14 years leading the trade group, making Horvath one of Washington's longest-serving lobbyists.

"The board made an excellent choice in selecting Dena to lead NGSA," Horvath said. "She is a consummate professional whose Washington experience will allow her to smoothly step in and move the association forward."

Wiggins has more than 20 years of experience representing energy clients, with a focus on federal regulatory matters including natural gas transportation and storage.

As a private attorney, she was involved in some of the Federal Energy Regulatory Commission's most significant rulemakings in recent decades, including those restructuring the natural gas industry.

That background will serve Wiggins well at NGSA, which holds an important niche representing gas producers in pipeline regulation matters at FERC.

Wiggins also was involved in high-profile legislation such as the Energy Policy Acts of 1992 and 2005, the decontrol of wellhead prices of natural gas and the repeal of the Fuel Use Act, NGSA said.

She also has served as general counsel for Process Gas Consumers, a trade association of industrial gas consumers.

NGSA has been active recently in monitoring increased regulation of energy derivatives by the Commodity Futures Trading Commission, pressing to ensure that tougher federal oversight of swaps does not crimp the ability of gas producers and consumers to hedge prices with forward contracts.

And as the shale gas boom has increased the use of gas for power generation, NGSA has pushed in policy discussions to better harmonize gas and electricity markets and to expand pipeline networks to serve producers in emerging shale gas plays.

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PsEG solar buys first West Coast solar PV plants

In its first West Coast project, PSEG Solar Source said last month it is buying two small, utility-scale solar plants from Canadian Solar subsidiary, CSI Holdco LLC and will sell the power to Pacific Gas & Electric under a 20-year agreement.

The solar photovoltaic (PV) projects, together called the PSEG Shasta Solar Farm, are the largest in mountainous Shasta County, Calif., built at more than 3,300 feet in elevation between Mount Lassen and Mount Shasta in the Cascade range.

The two PSEG Shasta Solar projects, the company's seventh utility-scale project, will generate a total of 4.4 megawatts. Construction started in July, with commercial operation expected in early 2014. The deal, which closed December 16, was announced December 23.

PSEG Solar Source, a unit of diversified energy company Public Service Enterprise Group, (PSEG) develops, builds, owns and operates utility scale solar projects. It owns the largest solar facilities in Delaware and Ohio, the second largest in Florida as well as projects in Arizona and New Jersey.

Murkowski calls on Obama to lift U.S. ban...

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But her call is certain to resonate with Sen. Mary Landrieu (D-La.), the likely replacement for current Senate Energy and Natural Resources Committee Chairman Ron Wyden (D-Ore.), who is expected to leave the panel to replace Sen. Max Baucus (D-Mont.)—recently named by Obama as U.S. ambassador to China—as chairman of the Senate Finance Committee.

While Wyden has been cautious about accelerating exports of U.S. hydrocarbons during his brief tenure at the energy committee helm, Landrieu—another steadfast industry champion who also faces a tough re-election fight in November—can be expected to team energetically with Murkowski in pushing the administration to lift the ban.

Murkowski's speech came on the same day that American Petroleum Institute President and Chief Executive Officer Jack Gerard, in a "State of American Energy" address, also called for lifting the export ban.

"If we are to continue our nation's current positive energy production trends, we must implement energy policies based on current reality and our potential as an energy leader, not the outdated political ideology of the professional environmental fringe or political dilettantes," Gerard said.

The two speeches came barely a month after Sen. Edward Markey (D-Mass.), who opposes lifting the ban, wrote a letter urging U.S. Trade Representative Michael Froman to "vigorously oppose" any efforts in the World Trade Organization to weaken the export ban, saying that oil produced in the United States should be used to displace oil imports.

Markey's letter came amid growing calls by senior oil industry executives to lift the export ban and reported efforts by API to construct a legal strategy that a foreign country could use to bring a trade complaint on the export ban before the WTO.

The debate on the export ban comes as the rise of horizontal drilling and hydraulic fracturing (fracking) technologies has sparked a surge in production in shale formations rich in light, tight oil (LTO) such as Texas' Eagle Ford and the Bakken in North Dakota. Soaring output in these basins has put the United States on track to surpass Saudi Arabia and Russia as the world's top oil producer by 2015, according to a November 2013 report by the International Energy Administration.

And while the IEA report projected the United States will be the world's leading producer for only a few years before surrendering the lead back to the Saudis, it said the ongoing surge in U.S. LTO production will be enough to keep the United States all but self-sufficient in oil for decades.

Murkowski, however, warned that the export ban, the existing U.S. refining infrastructure and the "antiquated" and "absurd" regulations governing most hydrocarbon exports threaten to stifle the U.S. production renaissance.

On the Gulf Coast, where 40 percent of U.S. refining capacity is situated, most refineries are designed to process heavier crudes. While LTO can be shipped to lighter-grade refineries on the East Coast or blended with heavier crudes, continuing the export ban will lead to an "unsustainable glut" in U.S. LTO supply, causing production to slow, costing U.S. jobs and depriving consumers of the economic benefits of exports, Murkowski said.

"With minimal exceptions, the export of crude oil is prohibited by law," she said. "There will come a time, however, when we will have an unsustainable glut of this light crude. It may be next year, it may even be a matter of months. The free market works wonders, but it can't work magic."

At the same time, she said, lifting the ban "would send a strong signal to energy markets that we are serious—we are serious as a country—about our emerging role as a major hydrocarbon producer."

Legislation adopted by Congress in 1975 in the wake of the first Arab oil embargo bans oil exports in most cases. But Murkowski said this and other laws bearing on the topic have language that would allow Obama to lift the ban for petroleum and condensates if, for example, it can be demonstrated that those fuels cannot reasonably be marketed in the United States. The president also simply can declare that it is in the national interest to lift the ban, Murkowski asserted.

"I am not proposing comprehensive energy export legislation," Murkowski said. "I believe the executive branch has the statutory authority to implement most of these ideas on its own, and if the president needs help from the legislative branch, he will always have an open partner on the energy committee in me."

However, Murkowski said if the "administration is unwilling to act on its own, or if that statutory authority needs further authorization, I am prepared to introduce legislation to modernize the law."

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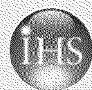

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Duke's Grigsby tapped to lead WIrEs transmission trade group

WIRES announced Sunday that Phillip Grigsby, senior vice president of commercial transmission at Duke Energy, will serve as president through 2014 of the industry coalition supporting policies that encourage transmission investment.

Grigsby succeeds Don Clevenger, senior vice president of external affairs at Oncor, as the top official at WIRES.

The new slate of officers for WIRES, approved at the group's annual meeting in October, also includes John Flynn, executive vice president of strategic planning and project development at American Transmission Co. as WIRES' president-elect; Steven Burtch, senior vice president of business development at AltaLink as WIRES' vice president; and Noman Williams, vice president of transmission policy for Sunflower Electric Power Corp, as WIRES' secretary.

WIRES is a non-profit trade association of transmission providers and customers, regional grid managers and equipment and service companies. WIRES promotes investment in electric transmission, energy infrastructure and competitive energy markets.

Proposed CPuC penalty on san Bruno accident raises dangerous precedent

COMMENTARY

By JaMEs y. KErr anD PauL G. aFOnsO

Eight people died in 2010 when an explosion erupted from a high-pressure 30-inch gas pipeline in the San Francisco suburb of San Bruno. Now, as our former colleagues on the California Public Utility Commission (CPUC) work to set an appropriate fine for the utility responsible for this tragedy, they are being guided by principles of modern utility regulation that trace their roots to the Progressive Era.

Regulators in California have a tradition of responding to tough circumstances and leading our nation in addressing the most difficult of regulatory challenges. In the San Bruno case, however, the CPUC appears to be on the verge of levying penalties that are so unreasonable, they could set a dangerous precedent if other states choose to follow the agency's example.

The CPUC staff has recommended the commission impose a $2.25 billion penalty on Pacific Gas & Electric Co. (PG&E) and disallow the $2.215 billion already spent by PG&E on pipe safety upgrades as an offset. As a result, credit rating agencies estimate the total financial impact on the company and its shareholders at about $4 billion. By comparison, the largest fine ever levied in a pipeline accident was $101.5 million.

America's regulatory tradition sees fines in a different light from either the civil or criminal justice systems, which are inherently backward-looking and designed either to compensate those directly harmed or to punish those who behaved improperly. Instead, regulatory fines reflect, in large part, judgments about how best to serve the public interest in the future.

Regulators thus focus on the service that utilities can deliver to customers and communities tomorrow. They work to ensure that the utilities can attract capital at a reasonable cost—a necessary condition that a utility must meet if it is to provide affordable, reliable and safe service over the long term. Such regulatory principles would lead the CPUC to endeavor to maintain or improve the investment climate in California in ways that directly benefit customers and communities served by the state's utilities.

Fines still have a place in this regulatory tradition. Regulators might assess fines to achieve two goals: 1) to get the company to focus on its problems with a sense of urgency, and 2) to get the company to improve its culture of safety. But this process of setting an appropriate regulatory fine is a process of striking the right balance.

A small fine for past actions or omissions might tempt utility managers to return to "business as usual." However, when a penalty crosses the line between "constructive" and "unreasonable," the regulators may inadvertently make a bad situation worse.

An excessive fine can lead to unintended consequences that compound past problems and ultimately harm the customers whose interests should be paramount. If a fine is large enough to be financially crippling, access to capital will tighten and capital will become more expensive, raising rates for customers and potentially forcing choices between safety on the one hand and reliable and affordable service on the other. Such a fine can create the risk that the operator of aging infrastructure lacks the resources necessary to upgrade the infrastructure and the safety practices that caused the problem in the first place.

These concerns are not mere conjecture on our part. Reacting to the proposal by the CPUC staff, two credit-rating agencies—Moody's and Standard & Poor's—stated that such a penalty, if adopted, would prompt them to reassess the risks for regulated entities across California, creating repercussions far beyond PG&E.

PG&E, for its part, has accepted responsibility for the tragedy in San Bruno. It has reached civil settlements with the victims, replaced scores of executives and managers and begun to invest heavily in safety and new infrastructure. Yet, it remains a regulated entity, and thus it remains obligated to serve effectively millions of Californians today and in the future. Any fine should recognize its prospective obligations and be a constructive influence on a safer future for all of its customers.

We are united in our hope that the century-old principles of constructive regulation will provide guidance as California's commissioners balance the need to address the problems of the past while ensuring that PG&E emerges with the focus, culture and resources necessary to provide affordable and safe energy in the future.

—James Y. Kerr II served on the North Carolina Utilities Commission and is former president of the National Association of Regulatory Utility Commissioners and the Southeastern Association of Regulatory Utility Commissioners. He is with McGuireWoods LLP in Raleigh, N.C.

—Paul G. Afonso served as chairman of the Massachusetts Department of Telecommunications and Energy and as president of the New England Conference of Public Utility Commissioners. He is with Brown Rudnick in Boston.

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FErC staff says Louis Dreyfuss unit may have gamed power markets

Federal Energy Regulatory Commission staff said Monday it has preliminarily concluded that Louis Dreyfus Energy Services LP manipulated power markets by placing virtual trades in Midwest power markets with a goal of benefitting positions held in derivatives markets over three months beginning in 2009.

In a very brief "notice of alleged violations," FERC staff said that a non-public, informal investigation preliminarily determined that "Louis Dreyfus Energy Services, L.P. (LDES) violated [commission market manipulation rules] by placing virtual trades in the [Midcontinent Independent System Operator] at a node in North Dakota to affect the value of its nearby Financial Transmission Rights during the period November 2009 to February 2010."

Previously known as the Midwest Independent Transmission System Operator, MISO runs power markets in 13 states and the province of Manitoba.

CFTC-FERC pact leaves jurisdictional issue unsolved... (Continued from p. 1)

The agreements are a coup for LaFleur, who took over as acting FERC Chairman November 25 after the departure of former Chairman Jon Wellinghoff. The two agencies had negotiated for years under Wellinghoff's chairmanship without reaching agreement.

However, the new agreements do not solve—or even directly address—the basic jurisdictional question that has divided the agencies.

A spokesman for Sen. Ron Wyden (D-Ore.), chairman of the Senate Energy and Natural Resources Committee, said Tuesday Wyden wants to meet with the CFTC and FERC members to see if the new agreements will be "adequate" to fix the vexing jurisdictional question and protect consumers.

"These two agencies must resolve their differences regarding who has jurisdiction over energy trading so that consumers are protected," the spokesman said in a statement to *IHS The Energy Daily*.

"It's a positive sign that they agencies recognize the need for cooperation, however, Sen. Wyden must meet with both the FERC and CFTC commissioners to better understand how these new agreements will be implemented and determine whether or not they are adequate to ensure that there will be tough federal surveillance and enforcement of energy trading."

The CFTC has clear jurisdiction over futures and other derivatives markets, and has disputed FERC's claim of jurisdiction over derivatives markets that affect wholesale, physical energy markets that are at the center of FERC oversight.

FERC claims authority over that subset of derivatives markets under authorities granted by the Energy Policy Act of 2005, but the CFTC has opposed FERC's view, beginning in the 2006 case of Amaranth Advisors, the now-defunct hedge fund accused of manipulating U.S. natural gas markets.

While avoiding that question, the new MOU sets out a clear stepwise schedule, and individual staff responsibilities at both agencies, for negotiating jurisdictional disputes, and clearly commits the agencies to sharing certain data.

"It is good that they finally have some processes in place, but the agencies clearly still have different points of view about how their jurisdictions, allocations and responsibilities overlap," said William Scherman, a partner at Gibson, Dunn & Crutcher LLP and chairman of the firm's energy, regulation and litigation practice.

"As a practical matter, it still leaves the substantial issues pending for the courts to decide," said Scherman, a former FERC general counsel.

Both agencies have come under pressure from congressional leaders in recent months to reach agreement on jurisdictional and information-sharing matters. Indeed, Congress directed the CFTC and FERC to ink the MOU in the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, with the legislation calling for the agencies to "resolv[e] conflict concerning overlapping jurisdiction between the two agencies," among other substantive matters. The law directed the agencies to finalize the MOU by January 2011, a deadline long since passed.

Sens. Wyden; Lisa Murkowski (Alaska), ranking Republican on the energy committee; and Dianne Feinstein (D-Calif.), chairman of the Senate energy and water appropriations subcommittee in April urged FERC and CFTC to complete the MOU.

More recently, Wyden and Feinstein in August largely sided with Wellinghoff on the former FERC chairman's complaints that CFTC had been unwilling to share key market data on energy derivative trading that FERC wanted to help it pursue enforcement cases. In a written statement, Feinstein said CFTC's apparent withholding of information was "unconscionable" and Wyden said he was considering a legislative fix to "uncertainty" regarding the two agencies' jurisdiction.

That type of information-sharing appears to be largely ironed out in one of the two MOUs inked last week.

In it, the CFTC agrees to "take steps necessary to promptly obtain responsive information and furnish it to FERC," subject to certain conditions, when FERC requests information about "a designated market contract, a registered swap execution facility, a registered derivatives clearing organization, or any other board of trade, exchange, or derivatives market or swap data repository; and market participant information in the possession of CFTC."

FERC makes similar commitments to provide CFTC requested information about regional transmission organizations (RTO), independent system operators (ISO), independent market monitors for RTOs and ISOs, the North American Electric Reliability Corp., interstate pipeline and storage facilities and "market participant information in the possession of the FERC."

The second, shorter MOU signed last week leaves many unanswered questions on the jurisdictional dispute, in which FERC was dealt a heavy blow by a March 15 court ruling in the Amaranth case.

In the decision, the U.S. Court of Appeals for the District of Columbia Circuit ruled FERC could not pursue the case against former Amaranth Advisors LLC trader Brian Hunter because the CFTC had sole jurisdiction over energy futures markets.

That decision has raised questions about pending FERC enforcement actions against alleged manipulation that involves trading in both physical and financial energy markets, most notably a case against investment bank Barclays in which FERC is seeking $453 million in penalties.

Last week's MOU on jurisdictional matters says staff of both CFTC and FERC "will diligently and cooperatively communicate to coordinate and develop an approach that meets both agencies' regulatory concerns."

The MOU also sets up a very precise dispute resolution process when the two agencies disagree on a jurisdictional question, with timelines for elevating the dispute to higher agency officials if the disagreement persists.

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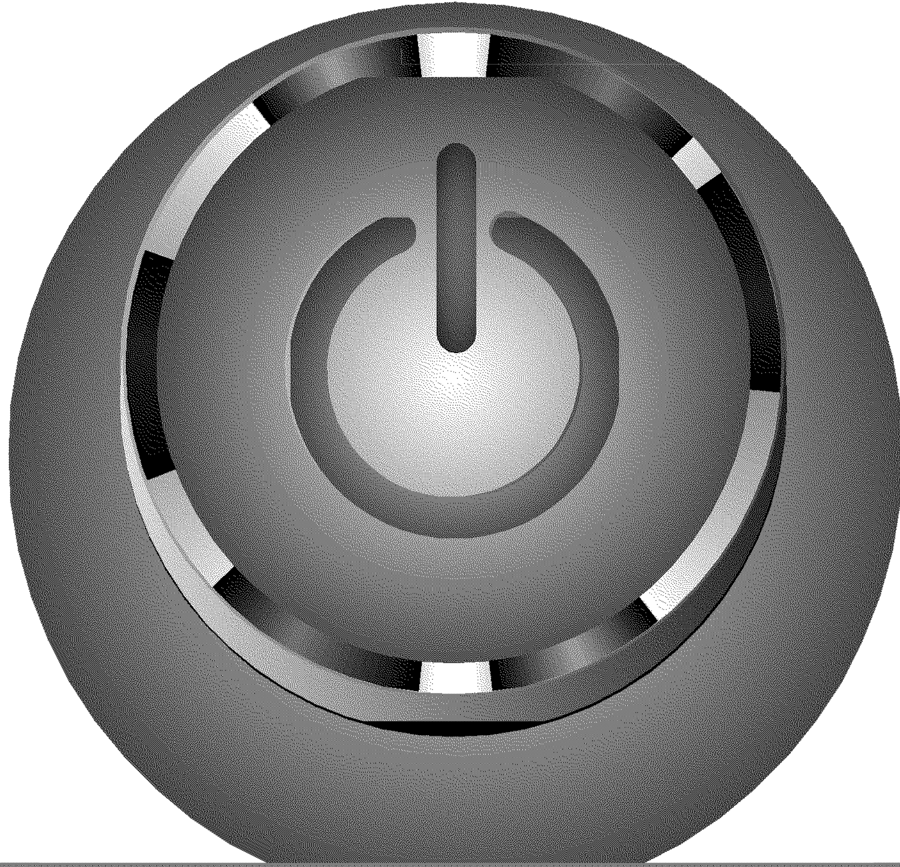

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