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Energy Market Intelligence 2017

Energy Quarterly Report FERC Updates & PHMSA Regulations–Q3

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1. FERC

The Senate confirmed President Trump's nominees to fill two of the four open seats on the FERC, producing a quorum for the first time since February. Neil Chatterjee (Senate Majority Leader Mitch McConnell's energy advisor), and Robert Powelson (commissioner on the Pennsylvania Public Utility Commission and current president of the National Association of Regulatory Utility Commissioners) joined Acting Chair Cheryl LaFleur on the five-member commission.

President Donald Trump named Commissioner Neil Chatterjee as Chairman of the FERC in August. Chairman Chatterjee announced James P. Danly as General Counsel at the Commission, effective Sept. 18.

Having achieved a quorum for the first time in six months, FERC can now tackle a number of policy challenges and begin issuing FERC certificates.

2. PHMSA

The Pipeline and Hazardous Materials Safety Administration is a United States Department of Transportation agency responsible for developing and enforcing regulations for the safe, reliable, and environmentally sound operation of the United States' 2.6 million miles of pipeline transportation. It is responsible for nearly one million daily shipments of hazardous materials by land, sea, and air.

PHMSA's mission is to protect people and the environment by facilitating the safe transportation of energy and other hazardous materials essential to daily living. The agency establishes national policy, sets and enforces standards, educates, and conducts research to prevent incidents. The administration also prepares the public and first responders to reduce consequences if an incident should occur. The agency oversees the nation's pipeline infrastructure, which accounts for 64% of the energy commodities consumed in the U.S., made up of the Office of Pipeline Safety and the Office of Hazardous Materials Safety.

PHMSA was created within the U.S. DOT under the Norman Y. Mineta Research and Special Programs Improvement Act of 2004.

PHMSA offices are located in five regions across the country and headquartered in Washington, D.C. The training center is located in Oklahoma City.

President Donald Trump announced he will nominate Skip Elliott as PHMSA Administrator. Once confirmed by the Senate, Elliott will serve as PHMSA's chief executive charged with administering federal regulation of natural gas, oil, and other hazardous materials transportation by pipeline and the regulation of multimodal transportation of hazardous materials.

Once Elliott is confirmed by the Senate, PHMSA is likely to move forward on various initiatives and regulatory matters that were delayed by the agency's leadership vacancies, including Chief Counsel and Chief Safety Officer.

Drue Pearce is currently Acting Administrator and was appointed to the role of Deputy Administrator for the PHMSA on Aug. 7, 2017. Pearce provides direction to over 600 employees within the agency's Washington, D.C. Headquarters and Regions.

PHMSA has several outstanding Congressional mandates with respect to pipeline safety going back to 2011, including various liquid and gas rulemakings that have been delayed and reconsidered since Trump's executive orders on deregulation. It is anticipated that the Agency will start moving on its pending rulemakings once new leadership is in place. That said, despite leadership vacancies since last Spring, PHMSA audits and enforcement have continued at their typical pace.

3. Key Findings

In August, the U.S. Government Accountability Office (GAO) issued a new report recommending that PHMSA document the assumptions and decisions it made in developing its Risk Ranking Index Model (RRIM), which the agency uses to determine the frequency of its pipeline inspections and that PHMSA conduct a data-driven evaluation of the RRIM to assess its effectiveness in prioritizing segments for inspection. The GAO Report includes two primary recommendations for action. First, GAO recommends that PHMSA document the decisions and underlying assumptions for RRIM's design, including what data and information were analyzed in determining threat factors, weights, risk tiers, and inspection frequency. Second, the GAO recommends that PHMSA establish and implement a process to periodically use data to review and assess the effectiveness of its model in prioritizing pipelines for inspection based on threats.

An amendment to the FY18 Transportation, Housing and Urban Development Appropriations bill requiring PHMSA to implement automatic shutoff valves and leak detection standards unanimously passed in the House of Representatives.

The amendment, introduced by U.S. Congressman Salud Carbajal (D-Calif), sets aside $1 million of PHMSA's own budget to finalize, update and implement the oil pipeline safety standards set forth in the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011.

In August 2017, the Department of Transportation released its first Significant Rulemaking Report since December 2016. The Significant Rulemakings Report provides a summary and the status for all significant rulemakings that DOT currently has pending or has issued recently.

Below is a summary of the status of rulemakings pending before PHMSA as reflected in the August Report and the Unified Regulatory Agenda, released in July by the Office of Management & Budget's Office of Information and Regulatory Affairs.

Pending Notices of Proposed Rulemakings

Proceeding	DOT Estimated Submission to OMB	DOT Estimated Publication	OIRA Estimated Publication
Class Location Requirements	December 26, 2017	April 9, 2018	Not Listed
Standards Update Rule - 2015 and Beyond	Not listed	Not listed	September 2017
Valve Installation and Minimum Rupture Detection Standards	Not Listed	Not Listed	September 2017

Pending Final Rules

Proceeding	DOT Estimated Submission to OMB	DOT Estimated Publication	OIRA Estimated Publication
Enhanced Emergency Order Procedures	Not listed	Not listed	September 2017
Plastic Pipe Rule	Not listed	Not listed	December 2017
Safety of Gas Transmission and Gathering Pipelines	No Date Provided	No Date Provided	June 2018
Safety of Hazardous Liquid Pipelines	September 26, 2017	December 29, 2017	December 2017
Underground Natural Gas Storage Facilities	No Date Provided	January 31, 2018	January 2018

4. Market Overview

PHMSA is cracking down on smaller violations in the crude oil, petroleum, and hazardous liquid industries to combat a rise in the number of pipeline accidents. Companies that handle hazardous liquids, such as petroleum products, crude oil, anhydrous ammonia, biofuel, and carbon dioxide, are receiving more letters and notices from the agency than are the gas and liquid natural gas companies. In notices of amendment, PHMSA will advise a pipeline operator that it lacks a particular safety procedure, or that an existing procedure lacks what the agency considers to be an important detail. The agency may then request that the operator revise or amend that procedure. The notices do not carry penalties or mandatory compliance steps.

From 2014 to 2016, PHMSA issued an average of 41 notices of amendment annually. It has issued 49 so far in 2017, 30 of which focus on hazardous liquid pipelines. Over the same three-year period, PHMSA issued an average of 65 warning letters annually. As of this month, the agency has sent 76 so far this year.

PHMSA is considering changes to hazardous liquid pipeline safety regulations that would address leak detection systems, pipeline integrity, and the possibility of leaks or spills near vulnerable areas, such as towns and cities, bodies of water, and protected habitats.

The increasing usage of hydraulic fracturing for oil and natural gas extraction has opened more parts of the country to exploration and drilling. As more unconventional wells are located in areas lacking the infrastructure to bring the oil and natural gas to market, constructors and operators of pipelines are racing in to fill the need. Advancements in horizontal directional drilling have allowed pipeline drillers to minimize aboveground disturbance. As a result, more miles of pipeline are located underneath “high consequence areas,” thereby exposing pipeline operators to more public scrutiny and more regulatory requirements.

The Pipeline Safety Act and PHMSA regulations require pipeline operators to create an Integrity Management Program (IMP) for all pipelines that could affect a high consequence area, which include highly populated and environmentally sensitive areas. The pipeline integrity regulations set forth certain assessment methods available to operators with pipelines in high consequence areas, and include additional requirements for pipelines constructed with low-frequency electric resistance welded steel (LF-ERW) because of a higher rate of seam failure.

5. Outlook

As the economy recovers, the use of natural gas continues to increase and development projects are ramping up. Protecting underground pipelines continues to be important.

Pipeline safety is one area where jurisdiction is shared between federal and state governments, unlike most issues where regulatory primacy is left to either the federal government or the states. Interstate pipelines fall under the federal government's jurisdiction to regulate, while intrastate pipelines primarily fall within the state's regulatory authority.

There are dynamics that complicate the issue of who has greater regulatory authority and finding a state/federal balance is important. PHMSA needs to play a more active role in guarding the U.S. pipeline network and the agency has the authority to do so.

There are improvements that PHMSA can make without any new legislation.