Departing Bay Urges FERC to Look Beyond Precedent Agreements in Pipeline Reviews

Jeremiah Shelor
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In a statement attached to Friday's order approving one of a handful of large new pipeline projects, former FERC Commissioner Norman Bay offered some parting thoughts on the impact of the shale revolution and how the Commission can improve moving forward.

While new natural gas infrastructure "can provide significant economic, reliability, and resiliency benefits...Nevertheless, it is also true that the development of natural gas pipeline infrastructure has become increasingly controversial," Bay wrote as part of the order approving the Northern Access project sponsored by National Fuel Gas.

Bay called on the Federal Energy Regulatory Commission to continue improving how it determines public need in pipeline certification proceedings, suggesting the agency has become too reliant on precedent agreements with shippers as the main determining factor while overlooking "other considerations" that could prove important in evaluating the long-term benefits of a pipeline project.

"There are other long-term issues that weigh in favor of examining whether other evidence, in addition to precedent agreements, can help the Commission evaluate project need," Bay wrote. "It is in the public interest to foster competition for pipeline capacity but also to ensure that the industry remains a healthy one, not subject to costly boom-and-bust cycles. Pipelines are capital intensive and long-lived assets. It is inefficient to build pipelines that may not be needed over the long term and that become stranded assets.

"Overbuilding may subject ratepayers to increased costs of shipping gas on legacy systems. If a new pipeline takes customers from a legacy system, the remaining captive customers on the system may pay higher rates. Under such circumstances, a cost-benefit analysis may not support building the pipeline."

Then there are the risks to pipelines posed by shifts in production activity in the U.S. onshore, Bay said.

"For decades, pipeline flows generally went from south to north and west to east. Production in the Marcellus and Utica led to flow reversals, with gas being transported from east to west and north to south," Bay wrote. "What happens to infrastructure developed to ship Marcellus and Utica gas west, if gas is cheaper to produce in Texas and Oklahoma? To the extent that producer-shippers are driving the development of new infrastructure, pipeline developers may now be exposed to market risk not present with shippers that are local distribution companies with a reliable rate base and predictable revenue stream.

"Similarly, it is important to ask what happens if basis differentials largely disappear at major gas trading hubs across the United States. A shipper would not need to transport gas from a more distant hub if it can be readily obtained for the same price from a closer one. This, too, might reduce the revenues of large interstate gas pipelines."

And, "while FERC does not regulate the production of natural gas, methane emissions, or the use of fracking, many commenters have raised environmental concerns in our certificate proceedings."

Bay said FERC should conduct a comprehensive review of the environmental impacts of the increased production occurring in the Marcellus and Utica shales, even though he concurred with FERC's position to date that the agency has no statutory obligation to conduct such a review.

"Even if not required by [the National Environmental Policy Act], in light of the heightened public interest and in the interests of good government, I believe the Commission should analyze the environmental effects of increased regional gas production from the Marcellus and Utica," Bay wrote. "...Where it is possible to do so, the Commission should also be open to analyzing the downstream impacts of the use of natural gas and to performing a life-cycle greenhouse gas emissions study.

"...This information may be of use to the Commission, the public, and industry in examining the broader issues raised in certification proceedings."