Marcellus Shale Update: Pipelines, Courts and Reports

December 17, 2018
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Pipeline issues continue to dominate the natural gas news. Last week, the pipeline industry got some good news, some bad news, and some news potentially so devastating it could threaten the entire industry.

Good news came for Mariner East 2. First, the Pennsylvania Supreme Court rejected a challenge from the Clean Air Council and some landowners in Delaware and Chester Counties to the utilization by the pipeline builder, Sunoco Logistic, of eminent domain along its 350 mile route. Later in the week, an Administrative Law Judge for the Pennsylvania State Public Utilities Commission rejected a request from seven citizens in Delaware and Chester Counties to shut down finishing of Mariner East 2 and to stop existing operations on Mariner East 1.

Sunoco Logistics repeated again that it would get Mariner East 2 in service by the end of the year, but not in the form originally intended. In certain areas, Mariner East 2 only will be 20 inches in diameter, with older pipe being attached to newer pipe. Sunoco Logistics never has fully explained why this is happening. Is it because of an operational problem? A cost cutting move? A supply issue? A timing issue? Especially with the use of older pipe that was never part of the original plans and the use of smaller diameter pipe than was originally proposed, concern with safety should be paramount. At the very least, the public is entitled to a full explanation from the pipeline company.

Make no mistake, Mariner East 2 is a very important project. It secures the supply of gas to Marcus Hook, where it either can be exported to help free Western Europe from reliance on Vladimir Putin or it can be moved domestically to ensure our national supply. It's for this very reason that the PUC should demand answers. For years, Mariner East was proposed as a certain type of project. In the end, Sunoco Logistics is delivering another one, with a slightly different route, less capacity, and older pipe in certain places. If the PUC doesn't know why this is, it needs to find out and publicize its findings.

While Sunoco Logistics received its good news on Mariner East 2, Penn East Pipeline, which will go from Northeastern Pennsylvania to Central New Jersey, also got positive court results. On Friday, US District Court Judge Brian Martinotti ruled that PennEast Pipeline Co. LLC, the owner of the pipeline, can use eminent domain to take properties in New Jersey – although initially, PennEast may only be seeking survey access to those properties as it still needs to address local environmental concerns for which the New Jersey Department of Environmental Protection has still not given State blessing. The pipeline will go through Hunterdon and Mercer Counties in New Jersey, allowing connection to pipelines that serve New Jersey and potentially the New York City Metropolitan Area. The New Jersey Attorney General's Office had no comment. Since the election of Democrat Phil Murphy in 2017, New Jersey has done an about-face and is not friendly to natural gas development. As with other opponents, however, Governor Murphy has no real plan to live without it.

There was bad news also. On Friday a pipeline owned by Mark West exploded in Washington County in Western Pennsylvania, injuring four people, one critically. It is believed that workers were cleaning the pipeline when vapors caught fire and ignited other combustible material. No matter how you slice it, pipelines are serious business, and safety should always be, but sometimes is not, given the full attention that it deserves.

More bad news for the pipeline industry came further south. A panel of judges for the Fourth Circuit vacated certain permits issued by the United States Forest Service to the Atlantic Coast Pipeline that would have allowed the pipeline to be built through the George Washington and Monongahela national forests. Atlantic Coast would run 600 miles from West Virginia through Virginia and into Eastern North Carolina. Twenty one of those miles would be through national forests. The Forest Service repeatedly told Dominion Energy, Duke Energy and the Southern Company, co-owners of the pipeline, that the pipeline might violate environmental standards. In 2017, however, the Forest Service issued permits allowing for the pipeline's building through these forests. The Fourth Circuit Panel vacated the permits, stating in effect that the Forest Service isn't doing its job properly. The pipeline owners intend to fight the decision, saying the judges are undermining the judgment of seasoned professionals.

Finally, the really devastating news came from California, where the California Public Utilities Commission charged utility Pacific Electric & Gas with falsifying safety and maintenance records. PE&G in effect admitted the accusation. Now the utility is facing massive criticism in light of the recent wildfires that were the most destructive in California history. While there is no evidence tying natural gas pipelines to the wildfires, PE&G's system is antiquated and poorly maintained. It also doesn't have enough inspectors to fulfill its reporting obligations.

Should any evidence arise that ties the pipelines to the fires, and then to PE&G's malfeasance, the entire industry could be at risk. Once again, it is up to the industry, and its trade groups like the Marcellus Shale Coalition, to start supporting the industry and not just reflexively opposing all government regulation and involvement. Like all of our nation's infrastructure, the pipeline system is antiquated and wearing out. It needs to be rebuilt, using new materials and state of the art construction techniques, and it needs companies willing to do so. It also needs government both willing to let them do so and to hold them to the highest standards. Let's all focus on that.

ATTORNEYS MENTIONED

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