Marcellus Shale Update: NESE: Governor Cuomo Will Decide – And NYC Will Face The Consequences

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While little noticed outside of the energy industry, New York Governor Andrew Cuomo is about to make one of the seminal decisions of his tenure. Before May 16, 2019, Governor Cuomo must decide whether to allow the New York State Department of Environmental Conservation (DEC) to issue a Section 401 Clean Streams Certification to the Northeast Supply Enhancement Project, which is proposed to bring natural gas from the Marcellus Shale gas fields of Northeastern Pennsylvania to New York City.

NESE, as the Project is known, would utilize portions of the existing 10,000 mile long Transco Pipeline, that currently connects natural gas fields in South Texas with New York City, to add about 10 miles of new pipe in Lancaster County, Pennsylvania, about 3 miles of new pipe in Middlesex County, New Jersey, and about 23 miles of offshore pipe mainly in New York Bay, plus a new compressor station in Somerset County, New Jersey. The additional pipe would allow the existing pipeline to convey increased gas volume originating in the Marcellus region to New York City.

The decision now before Governor Cuomo has profound implications for people as varied as all New York City residents (but especially lower income residents), real estate developers, business owners, and even Vladimir Putin.

NESE received final approval from the Federal Energy Regulatory Commission on January 25, 2019. Cuomo could try to kill the project by refusing to allow his DEC to grant the Section 401 Certification based on the fact that about 23 miles of the pipe will be underwater starting in New Jersey's Raritan Bay and extending into the lower New York Bay in New York State. The Governor has done this before, of course, with the Constitution Pipeline and other Upstate projects.

Because of his prior maneuvering, Cuomo has no good option. Given his history of withholding the Section 401 Certification for the Constitution Pipeline, the Governor's environmental supporters expect nothing less here. Indeed, the amount of water the NESE pipe will cross dwarfs anything seen before in the Section 401 controversy (except, ironically, a portion of the existing Transco Pipeline that is already installed offshore in the same general region in Raritan Bay and lower New York Bay).

On the other hand, refusing to grant the 401 Certification means risking power shortages in New York City. Already Consolidated Edison, which services portions of New York City and recently issued a moratorium on new gas hookups in Westchester County, New York, because of concern for future demand, is promising the same for Manhattan should projects like NESE be stopped. Likewise, National Grid, which services other parts of the City, is also threatening a moratorium if NESE is not built. However, of the two utilities, only the latter would actually be the pipeline's customer.

No new supply means a marked contraction of economic activity in the City and its immediate suburbs in New York State. Along with that economic decline would come higher energy prices, which disproportionately affect the economically disadvantaged, and an increased reliance on imported gas. Little would make Vladimir Putin happier than to have his foot placed squarely on New York City's economic lifeline.

Until now, Downstate New Yorkers have suffered little from the effects of their environmental activism. They got to feel righteous while the Upstate residents in Binghamton and Elmira paid the price from the moratorium on fracking. Now that economic price will be extracted in the biggest city in the country as well. How will the New York City business community deal with looming power shortages? What will the advocates for the economically disadvantaged say when their gas bills soar? What will the real estate community tell Governor Cuomo if they cannot offer gas service to new customers?

A major influence in Governor Cuomo's initial decisions first to declare a moratorium on fracking in New York State and then to stop all pipelines through the Section 401 process was his former brother-in-law, environmental activist Robert F. Kennedy Jr.

However, Kennedy's star has faded recently as he has been one of the leaders of the anti-vaccine movement that resulted in the resurgence of diseases like measles. More have come to question his judgment from that fiasco than arguably was the case a decade ago, when he was the chief attorney and board chair for the environmental activist organization, Hudson Riverkeeper. Will that loss of prestige be enough for Cuomo to approve NESE? If he does, how can he continue to block the Constitution Pipeline as well? If he does not approve NESE, what will happen if there are price spikes and brownouts in New York City, as quite likely will occur? What impact will it have on the 2020 Presidential race if during the next winter Russian gas tankers need to bail out New York City?

Whatever Governor Cuomo decides, this time it will be his Downstate base that feels the result.

ATTORNEYS MENTIONED

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