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Energy and Climate Report

Afternoon Briefing - Your Preview of Today's News

The following news provides a snapshot of what Bloomberg BNA is working on today. Read the full version of all the stories in the final issue, published each night.

Interior May Restore Pre-2015 Federal Fracking Regulations

Posted June 27, 2017, 03:16 P.M. ET

By Alan Kovski

The Interior Department appears poised to rescind its 2015 rule on hydraulic fracturing outright, after which it may simply revert to the pre-existing status quo on federal regulations for fracking on federal and Indian lands.

But, defenders of the Obama-era rule will have to wait and see exactly what the Trump administration does before they can formulate a legal strategy in response, Earthjustice attorney Michael Freeman told Bloomberg BNA June 26.

Oil and gas companies, routinely using fracking to enhance the flow of subsurface hydrocarbons, also are waiting, but with more hope for the outcome. Two of their trade groups, the Independent Petroleum Association of America and Western Energy Alliance, joined in litigation against the 2015 rule.

Interior asked a federal appeals court to hold the litigation in abeyance while the Bureau of Land Management (BLM) works to rescind the rule and considers what to put in its place.

The [most recent federal brief](#) filed at the U.S. Court of Appeal for the Tenth Circuit said BLM anticipates it will repeal the 2015 rule and revert to federal regulations for fracking that have existed for decades (*Wyoming v. Zinke*, 10th Cir., No. 16-8068, 6/20/17).

Looking to Pre-2015 Code

“It certainly looks like they are just going to rescind the rule outright” rather than replace it with a revised rule, Freeman said. But as for a legal challenge, he said, “I think we’ll have to see what they say and how they try to do it.”

The federal brief filed June 20 said, “BLM expects to seek comment on a proposal to rescind the 2015 hydraulic fracturing rule and to restore the affected sections of the Code of Federal Regulations to their pre-2015 language.”

A BLM notice of proposed rulemaking is under review at the White House Office of Management

and Budget, but its contents are not publicly disclosed.

The agency will provide for a public comment period of 60 days before a final decision, the government told the appeals court.

Authority to Regulate in Question

Wyoming, supported by three other states and the Ute Indian tribe, challenged the legal authority of the BLM to regulate fracking and won in the U.S. District Court for the District of Wyoming, vacating the 2015 rule. The Obama administration appealed, and the Trump administration has continued the appeal, hoping to defend its authority if not the details in the 2015 rule.

Environmental groups intervening in the case have asked the appeals court to continue the case, not hold it in abeyance, to rule on federal authority over fracking. In the June 20 brief, the government said the question of authority need not be decided in the current case.

“If BLM restores the earlier regulations, as it anticipates, BLM’s statutory authority could be decided at that time within the context of a rule that BLM chooses to implement,” Interior said.

The phrase “as it anticipates” was another indication of where the government was headed.

Federal Explanation Wanted

Freeman, whose Earthjustice law firm represents Earthworks, the Wilderness Society and other environmental intervenors in the case, said the federal government has not provided an adequate explanation to the appeals court of the rationale for the government’s course of action.

He described the administration’s moves as an “abdication of responsibility” to protect public lands. Like the Obama administration, he said the older federal regulations for fracking were out of date.

The government has indicated the 2015 regulations impose regulatory burdens that may be unjustified, but it has not spelled out the details. It also has cited President Donald Trump’s March 28 executive order directing Interior Secretary Ryan Zinke to publish a proposed rule for “suspending, revising, or rescinding” the 2015 rule.

Oil and gas industry groups have been emphatic about what they see as the unjustified burden of additional reporting and approval requirements imposed by the Obama administration regulations.

State regulations have been adequate to govern fracking on federal as well as other lands, the industry groups have said. To them, the 2015 fracking rule was a solution in search of a problem.

Energy Secretary Supports Nuclear, but Funding Cut Proposed

Posted June 26, 2017, 09:00 P.M. ET

By Rebecca Kern

Energy Secretary Rick Perry called domestic nuclear energy development a “game changer” at the start of White House “Energy Week,” but the department’s proposed budget would cut funding for its nuclear office.

Perry's June 26 comments to reporters came during the announcement of Energy Week events including some focused on American energy dominance—bringing together state, tribal, business, labor leaders in Washington. The week will culminate with an announcement on American energy policy by President Donald Trump at the Energy Department headquarters June 29.

Perry called U.S. nuclear policy “an important player in the development of our clean energy portfolio globally.”

“I believe we can achieve this by focusing on the development of technology like advanced nuclear reactors, and small modular reactors,” he added.

Advanced reactors are still decades away from commercialization and materials other than water, such as sodium and gas, to cool the reactors. Meanwhile, small modular reactors—smaller-scale and purportedly safer water-cooled reactors—could be on the market by the mid-2020s, with NuScale Power LLC's application under review by the Nuclear Regulatory Commission.

But the proposed fiscal year 2018 budget request for the Energy Department includes a 28 percent cut to the Office of Nuclear Energy from \$984 million in the fiscal year 2017 annualized continuing resolution to \$703 million. The office is responsible of nuclear technology research and development.

Analyst Skeptical

Chris Gadomski, the lead nuclear analyst at Bloomberg New Energy Finance, is skeptical of Perry's backing.

“Perry says there is support for the U.S. nuclear energy industry, but he says nothing about financial support for the industry,” he told Bloomberg BNA June 26.

“Commercializing an advanced reactor will cost between \$1.5 billion to \$3.5 billion and represents a very risky venture given low natural gas prices, no carbon price, and policy preferences for renewables,” he said. “That is a huge challenge for the U.S. industry even with government support. Trump's budget cuts rather than increases support for nuclear.”

The Nuclear Energy Institute's Neal Cohen, the senior vice president of external affairs, told Bloomberg BNA that he was “heartened to see Secretary Perry recognize ... the fact that nuclear is essential and can't be taken for granted.” But the trade group, which represents the nuclear power industry, has lamented the proposed funding cuts to nuclear.

“Unfortunately, the proposed budget does not support the actions necessary for the U.S. nuclear energy industry to thrive. Now is not the time to back away from federal investment that has played such a pivotal role in making the United States a world leader in this technology,” Maria Korsnick, NEI's president and CEO, said in May when the budget was released.

Defining Energy Dominance

The Energy Week is part of a month-long series of policy-themed weeks, including infrastructure week. The week will focus on American jobs utilizing U.S. domestic energy resources. Perry defined energy dominance as “using domestic resources for the good here at home and abroad.”

“An energy-dominant America means a self reliant, a secure nation, free from geopolitical turmoil of

other nations who seek to use energy as an economic weapon,” he said.

“An energy-dominant America will export to markets around the world, increasing our global leadership and influence. Becoming energy dominant means that we are getting government out of the way so that we can share our energy wealth with developing nations,” he added.

\$1 Billion Coal Mine Cleanup Bill Begins Moving in House

Posted April 05, 2017, 04:29 P.M. ET

By [Stephen Lee](#)

A bill that would deliver \$1 billion to coal states for abandoned mine cleanup got a new start in the House April 5.

One tweak to the measure, known as the RECLAIM Act (H.R. 1731, S. 728) and first introduced in the previous Congress, prompted questions about how states would actually use the money.

The new language allows the money, which would be drawn from the federal Abandoned Mine Land fund, to be spent cleaning up a state’s most polluted or dangerous sites even if those projects don’t offer any economic potential going forward.

The original version of the bill limited the spending to projects that would not only clean up the land but also create economic activity, such as tourist destinations or wind farms.

Straying Too Far?

Rep. Alan Lowenthal (D-Calif.), top Democrat on the House Natural Resources Subcommittee on Energy and Mineral Resources, said the bill “strays a bit far from the economic development goals that are the genesis of this program.”

Lowenthal’s concerns were compounded by a [report](#) issued by the Interior Department’s Office of Inspector General, which found that some states are spending their Abandoned Mine Land funds on projects other than coal mine reclamation, even though they have coal-related hazards.

Under the bill’s new language, “it’s easier for the money to be funneled to other programs or pet projects by state governments,” the Sierra Club said in a statement.

Concerns From Wyoming

Also during the hearing, Rep. Liz Cheney (R-Wyo.) raised questions about whether the bill would leave her state “on the hook” financially.

The AML fund comes from fees on coal production, and Wyoming is the largest coal producer in the nation. The state is also home to \$1.5 billion of unfunded AML liabilities. Only Pennsylvania, with \$5 billion, has more.

“It looks like an extremely expensive program that would cost states like mine a lot of money,” Cheney said.

Robert Scott, director of the Kentucky Department of Natural Resources’ Division of Abandoned

Mine Lands, testified that the AML's fee collection authority must be reauthorized when it expires in 2021.

The RECLAIM Act stalled in the last Congress when no senator offered a companion version. This year, however, a companion bill has been introduced by Senate Majority Leader Mitch McConnell (R-Ky.), and proponents on both sides of the aisle say they're optimistic it will pass.

Pumped Hydropower Storage Bill Passes House

Posted June 27, 2017, 03:34 P.M. ET

By [Brian Dabbs](#)

A bill designed to eliminate regulatory uncertainty in hydropower storage at federal reservoirs passed the House June 27.

The [legislation](#) (H.R. 1967) would tap the Bureau of Reclamation as the lead regulator for pump storage at the agency's facilities. The Federal Energy Regulatory Commission sometimes requires permits for that activity, and the legislation would remove FERC from the regulatory process, the bill's supporters said.

A House Natural Resources Committee spokeswoman previously told Bloomberg BNA that the bill could be part of a broad infrastructure package in the future. Its status in the Senate remains uncertain.

Pump storage is similar to a battery, and proponents said it's a useful way to extend the period of time that hydroelectric power is available. Water is pumped from a lower reservoir to a higher reservoir and later used to generate electricity.

Rep. Doug Lamborn (R-Colo.) sponsored the bill, and Rep. Cathy McMorris Rodgers (R-Wash.), a member of the Republican leadership and founder of the Hydropower Caucus, joined on the bill.

EPA Nitrogen Dioxide Air Standards Up For White House Review

Posted June 27, 2017, 02:03 P.M. ET

By [David Schultz](#)

The EPA's review of its nitrogen dioxide air pollution standards is nearly complete with the agency sending its proposal for how to proceed to the White House Office of Management and Budget.

OMB is reviewing the agency's proposed decision, according to a June 26 posting on its [website](#).

The Clean Air Act requires the Environmental Protection Agency to review its nitrogen dioxide standards at least once every five years to determine whether they should be revised. Earlier this year, the agency's [air pollution science advisers](#) said the EPA should leave the current standards in place. The agency also indicated it was leaning toward keeping the current standards in place in a [draft version](#) of its review that it released last year.

Nitrogen dioxide air pollution is primarily a byproduct of vehicle fumes that can cause serious respiratory problems. Regions that exceed the agency's standards for nitrogen dioxide levels, which

are currently between 53 and 100 parts per billion, could face mandatory pollution control measures, including stricter permitting requirements for industrial facilities.

An OMB review is typically the final stage of the rule making process before an agency decision is made public.

Perry Seeks Energy Pact with Mexico, Canada as NAFTA Talks Near

Posted June 27, 2017, 8:09 A.M. ET

By [Josh Wingrove](#) and [Jennifer A. Dlouhy](#)

The U.S. has a unique opportunity to develop a “North American energy strategy” with Canada and Mexico, Energy Secretary Rick Perry said, striking a conciliatory tone with the other members of the North American Free Trade Agreement.

While President Donald Trump has blasted NAFTA and moved to renegotiate it, Perry referred to the upcoming talks as a “massage” of the 1994 NAFTA deal, saying it presents an opportunity to bolster energy ties, not enact new trade barriers.

“That relationship I don’t think has ever been more important than it is today, particularly from an energy perspective,” he told reporters at the White House June 26, while stressing his close ties with his counterparts in Ottawa and Mexico City. “Energy is going to play a very important role.”

His comments come at the outset of so-called “Energy Week” from the White House, as Trump works to reduce regulations on energy producers and jump-start energy exports. Perry’s comments are nonetheless the latest signal Trump’s cabinet is warming to trade ties with Canada and Mexico—whether it’s lauding NAFTA and its impact on farmers or saying any revisions of the pact will be good for the U.S. neighbors, as well.

“Energy is an ideal area for the Trump administration to move forward with the relationship,” Duncan Wood, director of the Mexico Institute at the Woodrow Wilson Intentional Center for Scholars, said in a telephone interview.

Trump has long advocated for American energy dominance, Wood said: “But everybody knows that for the United States to do that on its own is a pipe dream in the short term at least—but for North America working together, it becomes feasible.”

Canada Trade

Perry likened NAFTA renegotiation to the “need to renegotiate a contract from time to time,” saying the president wants to “massage” and “rework” the deal, with energy playing an important role. When NAFTA was negotiated, the U.S. was reliant on oil imports from Canada and Mexico; it’s now both a major exporter and importer of oil and natural gas with both nations.

“I think we have a unique opportunity in this country to develop a North American energy strategy that will pay great dividends for Canadians, for Mexicans, for Americans, as we go forward,” he said, adding he has good working relationships with Canada Natural Resources Minister Jim Carr and Mexican Energy Secretary Pedro Joaquin Coldwell.

Carr echoed the comments, saying in a June 26 interview that Perry has championed North

American energy cooperation since his first days on the job.

“We both understand the importance of that integrated market,” Carr said in an interview. “We understand we have to keep goods flowing, that we can establish North America as a world leader in the production of conventional and clean energy.”

Oil Trade

Energy is a pillar of North American trade. Imported crude from Canada and Mexico now accounts for a larger percentage of total U.S. imports, growing to 49 percent in 2016, from 34 percent in 2010, according to the American Petroleum Institute.

North American energy trade acts to balance regional supply and demand needs. In 2016, the U.S. exported 2.1 trillion cubic feet of natural gas by pipeline to Canada and Mexico, while also importing 2.9 trillion cubic feet from the countries, according to the U.S. Energy Information Administration. The U.S. exported 1.6 billion barrels of crude oil and petroleum products to Canada and Mexico that year, while importing 1.4 billion barrels from the two countries, the EIA reported.

North American energy markets are already highly integrated, at least in oil, gas and petroleum products. Electricity is the outlier; while there are grid connections across the U.S.-Canada border, similar transmission does not occur between the U.S. and Mexico.

Trade Disputes

Already, a plurality of shipments of liquefied natural gas—20 percent, Bloomberg data show—from Cheniere Energy Inc.’s Sabine Pass export facility ultimately have been sold to Mexico since that site began shipping LNG in early 2016.

“If you would have asked me to think about where these volumes would go a year, year and a half ago, I wouldn’t have guessed our neighbors to the south of the border would be the single largest market to date,” Cheniere Executive Vice President Anatol Feygin said at an EIA conference in Washington June 26.

To be sure, the trade disputes between the countries go beyond NAFTA and energy. The U.S. and Mexico hope to sign a final deal on sugar imports this month, settling a long-standing irritant.

The U.S. imposed a second-round of duties on Canadian softwood lumber on June 26—a move widely expected even before Trump’s election. The U.S. is also reviewing steel rules, though Canadian Prime Minister Justin Trudeau is confident his country will be spared by any new measures. The U.S. and Canada are also at odds over aerospace.

Energy, Keystone

There’s more room for the conversation now, too, since the Trump administration authorized construction of TransCanada Corp.’s proposed Keystone XL pipeline to deliver oil sands crude from Alberta across the border, ultimately going to Gulf Coast refineries. For years as the Obama administration skeptically weighed the project and environmentalists battled the pipeline, it overshadowed trilateral talks.

That’s no longer the case.

“Mexico and the United States could talk about pipelines for natural gas, but ultimately on a trilateral basis, it was all stymied by that issue of Keystone,” Wood said. Without the Keystone decision hanging over discussions, “it liberates the agenda a little more.”

—With assistance from Jennifer Jacobs and Catherine Traywick.

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Navajo Vote to Extend Large Coal-Fired Power Plant’s Lease

Posted June 27, 2017, 9:00 A.M. ET

By [Stephen Lee](#)

The massive coal-fired Navajo Generating Station can continue to operate through 2019 after the Navajo Nation Council approved legislation allowing it more time to shut down.

The passage of [Legislation No. 0194-17](#) June 26 gives the operators of the 2,250-megawatt Navajo Generating Station in Page, Ariz.—the biggest coal plant in the West—five years to decommission and remediate the facility starting Dec. 23, 2019, when the current 50-year lease expires.

Had the measure failed, the plant’s operators would have had to close it in a matter of days to give themselves enough time to decommission the plant by the 2019 expiration date. The plant’s owners said earlier that decommissioning would take roughly two years.

The extension also means the large Kayenta Mine 80 miles away, which solely provides coal to the Navajo Generating Station, will stay open through 2019. If and when the power plant closes, however, the mine will also close because it doesn’t have a rail link connecting it to any other customers.

Peabody Energy, which operates the mine, has taken out a \$235 million bond to reclaim the land. Some environmental advocates, however, question whether the bond amount is enough to reclaim the 35.8 square miles that have been mined at Kayenta.

Navajo leaders, fearful of what the plant’s closure would mean for their economy, had supported the extension. The plant employs roughly 400 workers, and the mine employs another 243, according to the Institute for Energy Economics and Financial Analysis.

Grim Outlook Beyond 2019

The chances of the plant remaining open beyond 2019 appear murky at best. No outside buyers have stepped forward to take over the plant when the current lease expires, but several players, including the Navajo Nation and Peabody Energy, are actively looking for a buyer.

Andy Tobin, commissioner of the Arizona Corporation Commission—the state’s public utilities commission, told Bloomberg BNA before the vote that the plant plays a central role in Arizona’s economy.

“It’s the only coal plant in Arizona that burns Arizona coal,” Tobin said. “Without it, Arizona will become a full-time energy importer, which is something that bothers me as a whole.”

Tobin also said he thinks it's possible to build a rail link to the Kayenta Mine, so Peabody can sell the coal to other customers.

Energy Regulator to Retire June 30 Leaving One Commissioner

Posted June 27, 2017, 9:23 A.M. ET

By [Rebecca Kern](#)

Federal Energy Regulatory Commissioner Colette Honorable [announced on Twitter](#) last night that Friday, June 30 will be her last day in that role. Her departure will leave the commission, an independent agency that regulates natural gas pipelines, liquefied natural gas terminals and hydropower projects, with only one member—Acting Chairman Cheryl LaFleur. The agency has been without the quorum it needs to make major decisions since February.

Two nominees to fill vacancies on the commission—Neil Chatterjee and Robert Powelson—are still awaiting Senate confirmation after their nominations were reported favorably out of a Senate committee.

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