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Utilities not shielded by Toshiba pledge on nukes—S&P

BY JEFF BEATTIE

While financially reeling Toshiba this week provided fresh commitments that its Westinghouse subsidiary would complete half-built reactors in Georgia and South Carolina, a leading credit rating firm Thursday suggested those guarantees may not hold up, potentially exposing the utilities and ratepayers to massive costs.

In an unusually blunt note to investors, S&P Global Ratings appeared to cast some doubt on Toshiba's pledge to serve as "guarantor" if Westinghouse could not meet payment obligations to utilities under contracts Westinghouse signed in 2015 to serve as primary construction contractor on new reactors be-

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Industry groups ask Hill for big regulatory rollbacks to cut costs, speed approvals

BY CHRIS HOLLY

Business and industry groups Thursday presented the Republican-controlled Congress with a lengthy wish list of rollbacks of the Clean Air Act and other bedrock environmental protection statutes, saying federal rules are stifling economic growth, imposing excessive costs on companies and unnecessarily delaying approval of important energy projects.

Among other changes outlined at a hearing held by the House Energy and Commerce Committee's Subcommittee on Environment, the groups proposed sharply reducing the frequency of Environmental Protection Agency reviews of federal air quality standards to determine if they remain sufficiently stringent to protect human health and the environment.

Representatives of the National Association of Manufacturers (NAM) and the U.S. Chamber of Commerce also called on lawmakers to require agencies to more fully consider costs when contemplating new rules, and to streamline permitting procedures for pipeline, liquefied natural gas terminals, nuclear power plants and other industrial facilities with large environmental footprints.

Subcommittee Chairman John Shimkus (R-Ill.) and other GOP lawmakers on the subcommittee generally backed the industry groups' call for major regulatory reform, but Shimkus said his panel would begin by focusing on revisions to speed redevelopment of abandoned industrial "brownfield" sites because that fix

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Trump, revamped FERC to aid revival of Oregon LNG facility

BY JIM DAY

Marking the revival of the only major natural gas infrastructure project the agency has rejected in recent years, the Federal Energy Regulatory Commission last week said it would begin a review of a new application for Veresen Inc.'s Jordan Cove LNG export project in Oregon, which now appears better positioned to become the first LNG export terminal on the U.S. West Coast.

Alberta-based Veresen has asked FERC to use the same favorable environmental review that the agency completed in 2015 and, importantly, to consider recently signed precedent agreements with shippers covering close to three-fourths of the capacity of the pipeline that would feed the terminal near Coos Bay, Ore.

Those requests would speed up the new FERC certification process and address the primary reason FERC cited last year in rejecting the project—that there was not a demonstrated demand for the pipeline delivering gas to the facility.

More broadly, Jordan Cove LNG clearly enjoys better prospects for receiving certification following the resignation earlier this month of former FERC Chairman Norman Bay. His departure left three vacant seats on the commission that will be filled by Republicans appointed by President Trump, who has promised to expedite federal approvals of energy infrastructure projects.

The oil and gas industry and many western state lawmakers were infuriated when FERC in March 2016 rejected Jordan Cove LNG and Williams Partners' Pacific Connector gas pipeline, which would deliver 1.2 billion cubic feet per day (cfd) of gas to the export facility from interconnections with the Ruby and Gas Transmission Northwest pipeline systems that serve the Rockies and western Canada.

Producers in those regions,

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The Energy Daily will not publish Monday, February 20, in observance of Presidents' Day.

TransCanada launches new effort to win Nebraska approval for Keystone XL

TransCanada Thursday filed its application with the Nebraska Public Service Commission for approval of its proposed route for the Keystone XL oil pipeline, which faces a hotly contested review that will include a trial-like hearing on the potential public benefits of the controversial project.

The Public Service Commission (PSC) has seven months to reach a decision, but that could be extended by five months. Pipeline opponents already have vowed to appeal any approval of the project and to wage legal battles over the eminent domain authority the PSC may grant for the pipeline.

The opponents may have an uphill climb, however, as a 2011 Nebraska law covering oil pipeline siting states flatly states that "the construction of major oil pipelines in Nebraska is in the public interest of Nebraska and the nation to meet the increasing need for energy."

The pipeline has received approvals from other states, but it does not have an approved route in Nebraska. The project would carry 830,000 barrels per day (bpd) of heavy crude from Alberta's oil sands to a terminal in Nebraska and then on to the Gulf Coast

Former Nebraska Gov. Dave Heineman (R) approved a route for Keystone XL in 2013 based on a bill he helped push through the legislature, but a state judge ruled that law violated the state Constitution by removing siting authority from the PSC. TransCanada subsequently filed an application with the PSC, but then withdrew it after former President Obama in 2015 refused to provide federal permits for the pipeline over concerns that it would boost production of carbon-heavy oil sands and undermine the administration's climate goals.

The PSC said its new review of Keystone XL will not consider safety issues such as the risk of pipeline spills, but that it will prepare an environmental impact statement.

President Trump has ordered an expedited 60-day federal review of Keystone XL and the State Department announced last week it has received an application from TransCanada.

Trump, revamped FERC to aid revival of LNG facility... *(Continued from p. 1)*

particularly in the shale formations of western Colorado, see Jordan Cove as a key outlet for accessing potentially lucrative gas markets in Asia.

With its renewed application teed up for a fast-track review at FERC, Jordan Cove is again in position to be the first and possibly only LNG export facility on the U.S. West Coast. Veresen requested that FERC make a certification decision on the project by November 2018, in hopes of meeting a target in-service date in the first half of 2024.

Although still years away, that timeframe could allow Jordan Cove to take advantage of its relatively close proximity to growing LNG markets in Asia. Global markets are expected to be heavily oversupplied with LNG at least into the early 2020s, but many analysts expect rising demand to support some new export projects after that.

About 20 LNG export projects also have been proposed in British Columbia, but to date only the relatively small Woodfibre LNG export terminal has reached a final investment decision to proceed. Much larger projects, such as Petronas' Pacific Northwest LNG, have hit repeated delays, and the high costs of building the liquefaction plants and pipelines in British Columbia have raised questions about whether they will be competitive with the LNG export terminals now under construction along the Gulf Coast.

Sempra Energy also has proposed converting its existing Energia Costa Azul LNG import facility in Baja California, Mexico, into an export terminal.

In its request to use FERC's pre-filing application process for its new application, Jordan Cove said that since the commission first rejected the project, it has inked preliminary agreements to sell about half of its liquefaction capacity to Japanese buyers Itochu and Jera, and that the Pacific Connector pipeline had inked precedent agreements with shippers covering nearly 68 percent of its capacity.

The developers are in discussions with other potential buyers for its liquefaction capacity. Veresen has previously indicated that those discussions depend in part on potential buyers' confidence that the project will receive regulatory approval.

Veresen also has simplified the design of the export terminal so it would not need a 420 megawatt power plant on site, a move that presumably would cut costs significantly. It also has made dozens of changes to the proposed pipeline route from Malin, Ore., to Jordan Cove in response to landowner and other concerns, according to its request to begin the pre-filing process.

"We are confident the project will make it through permitting this time around. We have addressed the commercial and public benefit requirements asked of us last time around," Jordan Cove spokesman Michael Hinrichs said.

He noted that the final FERC environmental impact statement on the project in 2015 was favorable and that the newly proposed liquefaction design would further reduce environmental impacts. "We are going into this permitting process with the strongest case we've ever presented," he said.

He added that Jordan Cove believes the LNG market conditions "remain credible" for the project and that negotiations are continuing with other potential buyers.

FERC in its rejection of the project last year said it could not justify granting eminent domain authority for a pipeline that had not demonstrated significant demand for its capacity.

FERC on February 10 approved Veresen's request to use the pre-filing application process and to contract with Tetra Tech Inc., the same firm that assisted FERC in compiling the original environmental review, to continue working on the project application.

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Con Ed to pay record fine for gas blast

Consolidated Edison will pay a record $153 million fine as part of a settlement reached Thursday with New York regulators in connection with a March 2014 natural gas explosion in East Harlem that destroyed two apartment buildings and left eight people dead.

Under the settlement with the New York Public Service Commission (NYPSC), Con Ed agreed not to seek reimbursement from ratepayers for about $125 million spent on gas leak response programs since the explosion. It also includes a $25 million fund that will pay for as-yet unspecified programs meant to benefit Con Ed customers and various other safety programs.

The settlement follows investigations by the state Department of Public Service (DPS) and National Transportation Safety Board that found the explosion was caused by an improperly fused connection to a gas main. DPS cited the utility for about a dozen safety violations related to that flawed connection, failure to detect it, inadequate worker training and failure to notify emergency responders to reports of the gas leak.

The fine is the largest gas safety-related settlement in the state's history and was made possible in part by regulations that link the level of fines to the time the flaw that led to the explosion went undetected.

Con Ed has said that a known problem with a water main in the area undermined its gas main and caused the leak and subsequent explosion.

Industry groups ask Hill for big regulatory rollbacks... *(Continued from p. 1)*

appears to have strong bipartisan support.

Industry groups have been calling for regulatory rollbacks for years, but Democrats and their environmental allies have largely blocked them on Capitol Hill or in the courts. But with Republicans now controlling both chambers of Congress and the White House, industry sees a golden political opportunity to enact legislation that could profoundly change U.S. environmental laws.

Ross Eisenberg, NAM's vice president for energy and resources policy, told the subcommittee that because the Clean Air Act and other environmental statutes have not been amended in decades, federal regulations implementing those laws have become outdated and are damaging U.S. business and industry.

Federal rules "are increasingly rigid, costly and harm our global competitiveness," he said. "We have lost the critical balance in our federal environmental policies between furthering progress and limiting unnecessary economic impacts."

Among a host of recommended changes to the Clean Air Act, the groups called on Congress to change a 46-year-old statutory mandate that EPA every five years review existing national ambient air quality standards (NAAQS) for so-called "criteria" pollutants such as lead, nitrogen oxides and sulfur dioxide to ensure they adequately protect public health. If the agency determines that existing standards are insufficiently protective, it must by law issue new, tighter NAAQS.

But the business groups said counties found to be out of compliance with a NAAQS have difficulty attaining that standard before EPA issues a new standard for the same pollutant, again putting those counties out of attainment. The groups said that if a county is out of attainment, few companies are willing to locate new factories or plants in the county because they would have to install far more expensive pollution controls than if they located to a county that has attained the NAAQS.

They urged Congress to address the problem by doubling the mandatory review interval from five years to 10, saying that would give counties sufficient time to attain a standard without fear of losing economic development as a result of EPA's setting a new, more stringent standard.

Rep. Pete Olson (R-Texas), vice chairman of the House Energy and Commerce Committee, has introduced legislation to double the review interval and to make other sweeping changes to the NAAQS provisions—changes environmentalists say would harm millions of Americans by delaying air quality improvements.

The business groups also seek a major change to the air statute's New Source Review (NSR) provisions to allow electric utilities and manufacturers to make major modifications to their power plants and factories without triggering NSR requirements to install controls to capture the extra pollution resulting from the changes.

Utilities, in particular, have been targeted by Environmental Protection Agency NSR enforcement actions for making what the utilities have claimed are minor changes to power plants. EPA, however, has insisted the changes have resulted in substantial increases of emissions in violation of the NSR rules. In most of these enforcement cases, utilities have chosen to settle with the agency, but for years have urged Congress to change the law.

The groups also asked Congress to pass legislation to declare that biomass power plants are carbon neutral; to require a more rigorous review of the "social cost of carbon" to project costs of climate change; and to "require federal agencies to perform an analysis of any new major rulemaking on the reliability and cost of energy for manufacturers."

And in a major change, the groups said EPA should be required to more fully consider costs when contemplating new air regulations. Current law requires EPA to consider only health effects when contemplating new air standards, although the agency can consider implementation costs once a standard is finalized.

The Trump administration and congressional Republicans have joined industry groups in saying that EPA regulations, in particular, have slowed economic growth and cost hundreds of thousands of jobs.

But Emily Hammond, a professor at the George Washington University Law School, told the subcommittee that hundreds of economic analyses have concluded that environmental regulations actually strengthen the economy.

Citing EPA statistics, Hammond said that between 1970 and 2011 aggregate air pollutant emissions dropped 68 percent while the U.S. Gross Domestic Product grew 212 percent. During the same period, she said, private sector jobs grew by 88 percent, she said.

Eisenberg suggested environmental regulations could be eased because over the past few decades U.S. manufacturers have sharply reduced their environmental impacts through energy efficiency and other pollution reduction efforts. "Through these traditional and innovative measures, manufacturers have helped to usher in a new era of a cleaner and more sustainable environment," he said.

However, many emissions and pollution reduction efforts undertaken by industry were forced by regulations that business groups strongly resisted in Congress and the courts, to no avail.

DOE Idaho site gets most shipments to WIPP

The Energy Department announced this week it would resume transuranic waste shipments from DOE sites to the Waste Isolation Pilot Plant in April, with 128 shipments expected through next January, roughly half of which will come from Idaho National Laboratory.

In addition to the 61 shipments from Idaho, Los Alamos National Laboratory and the Oak Ridge, Tenn., site are expected to make 24 shipments apiece; Waste Control Specialists will make 11 shipments of DOE waste now at its commercial storage facility in Texas; and the Savannah River Site will make eight shipments.

The Idaho site is receiving priority because DOE faces a state-imposed deadline to remove some 65,000 cubic meters of transuranic waste from the lab by the end of 2018 or face penalties. However, the 61 shipments scheduled from Idaho will barely make a dent in the hundreds of shipments needed to complete the removal of transuranic waste by 2019.

Further, the Waste Isolation Pilot Plant—the sole disposal facility for transuranic waste at DOE sites—is still years away from returning to normal waste emplacement operations as it continues to recover from a radioactive leak in the underground New Mexico repository in February 2014.

Utilities not shielded by Toshiba pledge on nukes—S&P... *(Cont'd from p. 1)*

ing built at Southern Co.'s Alvin Vogtle plant in Georgia and Scana Corp.'s VC Summer plant in South Carolina.

Notably, Toshiba promised it would pay "any damages for project incompletion" under Westinghouse's new contract, which were designed to limit utilities' exposure to huge cost overruns on the reactor projects.

Toshiba made the new commitments on the reactors Tuesday in announcing a $6.3 billion write-down stemming from its losses on the projects.

But S&P suggested Tuesday that Toshiba's financial problems may be so severe that it may not be able to make good on the guarantees, creating a potential nightmare scenario for Southern Co.—the primary partner in the Vogtle project—and Scana, developer of the Summer project along with Santee Cooper, a state-owned utility.

"In our view, although the projects are more than half complete and most of the plants' key components have been fabricated and delivered to the construction sites, the substantial cost overruns and the announced impairments raise concerns about Toshiba's and Westinghouse's capacity to complete the nuclear units," the rating firm said.

Despite Toshiba's commitment to its guarantor role, "the company's compromised access to debt and equity markets raises questions regarding the guarantees' value," said S&P.

Underlining the company's grim financial situation, S&P said Toshiba's $6.3 billion impairment "wiped out all of the company's shareholders' equity, leaving it in negative territory." Moreover, S&P said that $6.1 billion in newly discovered cost overruns on the projects "significantly exceeds" the revenues that Toshiba stands to earn under Westinghouse's engineering, procurement and construction (EPC) contracts with the owners of the two projects.

Moreover, S&P noted Toshiba's ongoing "strategic review" of all its overseas nuclear business, a phrase that usually means a sale is under consideration. "Consequently, while Toshiba has sought to convey that it will maintain the status quo, elements of its announcement suggest that its nexus to the projects is increasingly tenuous," S&P said.

Toshiba is struggling due to the revised EPC contracts signed with both the Southern- and Scana-led teams in late 2015 that put Westinghouse on the hook for future cost over-runs. Westinghouse signed the contracts at the same time it bought out its partner in the EPC contracts, Stone & Webster, a subsidiary of Chicago Bridge & Iron. Westinghouse bought Stone & Webster as part of a series of agreements designed to end litigation arising from project cost overruns.

Southern and Scana officials said the revamped EPC contracts substantially shielded them against more cost overruns, but S&P said those protections were far from ironclad if Toshiba bowed out.

"If [Toshiba] cannot complete the projects, the owners might lose the benefits of the fixed-price contracts," said the rating firm, which suggested the utilities might have to step in to actively manage the project and find "alternative contractors" to finish the plants' construction.

That scenario would put heavy pressure on Scana and Southern and ultimately force state regulators in Georgia and South Carolina to decide whether to continue to pass on more project cost increases to ratepayers, who already have absorbed hundreds of millions of dollars in additional costs from the reactors.

Southern and Scana "would need to obtain approval from their regulators before committing to completing the projects without the protections of the fixed-price engineering, procurement, and construction contracts; the regulators' appetites for saddling ratepayers with additional cost overruns are uncertain," said S&P.

"Furthermore, the extent to which completion costs exceed the projects' budgets and the effects on leverage ratios is likely to influence the utilities' willingness to add debt or look to shareholders to absorb costs."

Westinghouse's pullout would be less painful to Santee Cooper and other public power partners in the projects, which can boost rates unilaterally without state review to cover any losses, the ratings agency said.

S&P's note was not all doom and gloom with respect to the investor-owned utilities, noting that Southern and Scana are afforded "a cache of financial protections, including construction contingency reserves and...letters of credit Toshiba has posted in favor of the owners."

Scana officials discussed those protections—and their contingency plans if Toshiba withdraws—in an earnings call Thursday. Kevin Marsh, president of South Carolina Electric & Gas (SCE&G), Scana's regulated utility subsidiary, said Toshiba's recent credit downgrade to "speculative" grade forced Toshiba to post a $100 million letter of credit. He said the parties' EPC contract also calls for Westinghouse to pay liquidated damages of up to $676 million if in-service dates for the new reactors slip past certain dates. Marsh told analysts that Scana could use some of that money as "liquidity" to find alternative contractors should Westinghouse drop out, or that Scana/SCE&G could serve as general contractor to finish the project.

Neither the South Carolina Public Service Commission nor the Georgia Public Service Commission has released a statement on Toshiba's financial problems