school plants urban forest for stormwater management MentorAPM selected to provide asset management to SM

[D] CRITICAL INFRASTRUCURE SECTOR NEWS – More information/clips in APPENDIX E

1107 Cyber: DOE warned of growing threats of grid cyberattacks through renewables and customer-owned devices like rooftop solar, electric vehicles, batteries, and smart thermostats. DERs open up new potential vulnerabilities – aka a much larger attack surface.

1104 Fire: ENR: Fire Marshal Offers Detail on Cause of Shut Texas LNG Site Fire

1103 Cyber:DHS CISA, the FBI, and the MS ISAC released a joint guide on Understanding and responding to Distributed Denial-of-Service Attacks, to provide "organizations with proactive steps to reduce the likelihood and impact of distributed denial-of-service (DDoS) attacks."

1103 Emergency Communications: APPA released a Public Power Storm Communication Guide

1103 Resilience: NCSL released an Energy Resilience news response after Hurricanes Fiona &Ian

1103 Fuel Shortages: DOE is monitoring diesel supply across the east coast

1103 NIST Cybersecurity & Privacy Program: NCCoE Releases Final Project Description: Responding to and Recovering from a Cyber Attack: Cybersecurity for the Manufacturing Sector (AND Industrial CONTROL SYSTEMS)

1103 Cyber and Physical Security - Nuclear: Nuclear Regulatory Commission has made available an unclassified version of its annual report to Congress detailing the prior year's security inspection program.

1103 Cyber: Hackers are using memory devices to launch cyberattacks since detection can be difficult. Marc Greenberg of Cadence Design Systems says, "All types of memory are potential targets for attackers."Semiconductor Engineering

1103 Cyber – SCADA SYSTEMS: CISA Releases Three Industrial Control Systems Advisories

1101 FIRE: Senator Bennet (D-CO) and other members from the CO delegation, asked the Forest Service for how and when it plans to disburse $10 billion in federal funds from the infrastructure law and the IFA to prevent and mitigate wildfires.

1031 Software Supply Chain: CISA, NSA & the Office of the Director of National Intelligence (ODNI) partnered with industry and government experts to release, "Securing the Software Supply Chain Recommended Practices Guide for Suppliers" and accompanying fact sheet.

1031 Cyber: CISA Releases Guidance on Phishing-Resistant and Numbers Matching Multifactor Authentication

1027 Cyber - If the House flips as expected – House E&C R's want to move on legislation to give DOE more oversight of grid infrastructure with respect to cyber attacks -

1027 OLD VIDEOS (1) Threats to the Electrical Grid from EMP and Solar Storms -- William Radasky, 2016 Houston Technology Center – Enterprise Forum Texas https://www.youtube.com/watch?v=xhL_uMqYg2s

1027 Weather: FCC to Further Strengthen Storm-Hardened Puerto Rico & USVI Networks

1027 Cyber: Homeland Security: DHS Announces New Cybersecurity Performance Goals for Critical Infrastructure CISA Developed Cross-Sector Recommendations to Help Organizations Prioritize Cybersecurity Investments

1026 Spills - NC Policy Watch: Colonial Pipeline contamination spreading in Huntersville; MVP

Southgate natural gas project on ice, and more

1026 Weather: Energy Central: Report: Texas grid still at risk

1024 The Hill: America's electric utilities facing transformer shortage crisis

1021 EVs & Flooding: Why 6 flooded EVs burst into flames after Hurricane Ian

1020 Physical: EnergyWire: How a transformer shortage threatens the grid -

1020 Fire: Drought, fire risk to stay high during third La Niña winter rought and wildfire risks will remain elevated in the western states while warmer than average temperatures will greet the Southwest, Gulf Coast and East Coast this winter, federal weather officials said Thursday.

1020 Contamination: 'Forever chemicals' found in water systems serving millions: GAO Rachel Frazin, The Hill "Forever chemicals" have been identified in water systems that serve about 9.5 million people in just six states, according to a new analysis of state data by a congressional watchdog.

1020 Dam Safety: Hartford Courant: Metropolitan District to test Goodwin Dam flood warning notification sirens

1020 Physical: GAO Report - National Security Snapshot: Department of Defense and Intelligence Community Preparedness for Biological Threats GAO-23-106066, October 20

1020 Cyber – Attack Surface Increases: Distributed resources like solar and batteries open growing pathway to cyberattacks: DOE Utility Dive -

1020 Supply Chain: Triangle, Mavenir tout first deployed open RAN network for FCC's rip & replace

1012 Cyber – GAO Blog: Securing the U.S. Electricity Grid from Cyberattacks https://www.gao.gov/blog/securing-u.s.-electricity-grid-cyberattacks

[E] INFRASTRUCTURE RELEASES – Details in APPENDIX F.

1106 NTIA Announces More Than $5.8 Million in Internet for All Grants to Minority-Serving Colleges and Universities

1104 Treasury & IRS Release Current Year Priority Guidance Plan 2022-2023 Initial Version, Nov 4, 2022 - Each year, the Treasury Department's Office of Tax Policy and the IRS use the Guidance Priority List to identify and prioritize that tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance.

1104 EPA Seeks Public Input on Inflation Reduction Act Programs to Fight Climate Change

1104 EPA Announces Selection of 29 EPA Environmental Finance Centers to Help Communities Access Funds –

1103 Treasury and IRS requests comment BY DEC 3 on the clean-energy provisions in IRA seeking stakeholder feedback on tax credit provisions concerning [1] commercial clean vehicles & alternative fuel vehicle refueling property, [2] carbon capture, and [3] clean hydrogen/clean fuel production.

1103 NTIA: Biden Administration Announces More Than $2.9 Million in Internet for All Grant to Albany State University

1102 U.S. DoE: Biden-Harris Administration Announces State And Tribe Allocations For Home Energy Rebate Program

1102 DOE Announces $43 Million To Support the Clean Energy Transition in Communities Across the Country Research Projects Across 19 States, the District of Columbia, and Puerto Rico Will Help Communities Improve Energy Planning, Increase Grid Resilience, and Restore

Power After Disasters

1031 ARPA-E Announced $39 Million for Technology to Grow the Domestic Critical Minerals Supply Chain and Strengthen National Security

1030 Energy Policy: Fossil fuel prices are and will remain elevated and that's good news for the energy transition because it will accelerate investment in renewables, (not so good for American consumers and inflation….) Bloomberg

1028 IRA: Biden administration created the National Climate Task Force to oversee the implementation of the Inflation Reduction Act with former White House Chief of Staff John Podesta and National Climate Advisor Ali Zaidi sharing its helm. E&E News

1028 IRA: Production Tax Credits & other taxpayer funded subsides in the IRA will drive down the cost of new energy projects and the CEOs of DTE Energy, Xcel Energy and CMS Energy say their companies are getting ready to make the most of the legislation. " E&E News

1026 EPA: Administration Announces $1,975,000 from EPA's Clean School Bus Program for West Virginia School Districts

1026 EPA: Biden-Harris Administration Announces Nearly $1 Billion from EPA's Clean School Bus Program for 389 School Districts

1024 NUCLEAR: Idaho National Lab getS $150 million from the Inflation Reduction Act to fund nearly a dozen infrastructure improvement projects at its Advanced Test Reactor and Materials Fuels Complex The Associated Press

1021 NUCLEAR: DOE-EM: DOE Awards $38 Million For Projects Leading Used Nuclear Fuel Recycling Initiative

1021 CLEANING OLD INFRASTRUCTURE: EPA: Biden-Harris Administration Seeks Public Input on Inflation Reduction Act's Greenhouse Gas Reduction Fund

1021 HYDRO: DOE-EM: Biden-Harris Administration Announces $28 Million To Advance And Deploy Hydropower Technology

1020 HYDROGEN; Baker McKenzie: United States: The Clean Hydrogen Strategy and Roadmap View original

1019 SOLAR: Solar Power World says - A robust solar panel manufacturing sector is quickly taking shape in the US thanks to the Inflation Reduction Act. Solar Power World

1019 TIDAL: DIE launches $35 million funding opportunity under the federal infrastructure law to help scale "tidal and river current energy systems" in the US. CNBC

1019 EV: Twenty companies across 12 states are set to receive $2.8 billion in grant funding from the Biden administration in an effort to drive more domestic manufacturing of electric vehicle batteries. The Associated Press

1019 BATTERIES: Administration Awards $2.8 Billion to Supercharge U.S. Manufacturing of Batteries for Electric Vehicles and Electric Grid

1019 BATTERIES: CNN: Biden to announce $2.8 billion in grants for domestic battery supply chains

APPENDIX A

ONLINE EVENTS OF POSSIBLE INTEREST FOR THE NEXT TWO WEEKS

TUESDAY November 8, 2022

8:00 AM ET Energy: Argentina Distributed Renewable Generation (8:00-11:00 a.m. EST)

https://us02web.zoom.us/s/87546640575?pwd=QmlYOFNDRUFKdzF2REFOOHRHWGpiZz09

Webinars Tuesday Nov 8 and Wednesday Nov 9 on Distributed Renewable Generation, 8:00-11:00 a.m. EST

Tuesday link: https://us02web.zoom.us/s/87546640575?pwd=QmlYOFNDRUFKdzF2REFOOHRHWGpiZz09

Wednesday link: https://us02web.zoom.us/s/82771385315?pwd=eXFuWXVsUjBqOTBSMGNTam1CL2ZLZz09

10:00 AM ET Energy: FERC: NAESB Gas-Electric Forum | November 8, 2022 10 – 1 ET

2:00 PM ET Energy: NRC: Public Observation Meeting with the Nuclear Energy Institute (NEI) Regulatory Issues Task Force (see Appx A for weblink or dial-in info)

Category: This is an Observation Meeting. This is a meeting in which attendees will have an opportunity to observe the NRC performing its regulatory function or discussing regulatory issues. Attendees will have an opportunity to ask questions of the NRC staff or make
comments about the issues discussed following the business portion of the meeting; however, the NRC is not actively soliciting comments towards regulatory decisions at this meeting.

Purpose: The purpose of the meeting is for the representatives of the Nuclear Energy Institute (NEI) Regulatory Issues Task Force (RITF) and U. S. Nuclear Regulatory Commission (NRC) to discuss several regulatory issues regarding licensing processes, oversight processes, and
other issues. The meeting will be conducted in a hybrid format (i.e., in-person, online, and teleconference).

Contact: Ekaterina Lenning 301-415-3151 Ekaterina.Lenning@nrc.gov NRC Office of Nuclear Reactor Regulation Office of Nuclear Material Safety and Safeguards

Participants: External

Nuclear Energy Institute (NEI) Teleconference: Bridge Number (301) 576-2978

Conference ID 945497215#

Webinar: URL Meeting Number Password https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZDU3ZDgzNDYtNzA3My00YTA0LWE4MDUtYjY2ODU3YTVhMzkz%40thread.v2/0?context=%7b%22Tid%22%3a%22e8d01475-c3b5-436a-a065-5def4c64f52e%22%2c%22Oid%22%3a%22ccfdd32a-66f5-4517-a728-f27ba9fd4765%22%7d

Meeting Number: 219324825639

Docket No: 99902028

Comments: Interested members of the public can participate via the Microsoft Teams Link or by the Teleconference number provided in this meeting notice. For additional details, please contact Ekaterina Lenning by email at Ekaterina.Lenning@nrc.gov or call the NRC's toll-
free number, 1-800-368-5642, and ask the operator to be connected to Ekaterina Lenning. If you are planning to attend in person, please contact Ekaterina Lenning by email at Ekaterina.Lenning@nrc.gov

5:00 PM ET Energy: EPRI at COP27 : The Resilience Imperative Register

TUESDAY, NOVEMBER 8, 2022 12:00 - 1:30 PM EET (5:00 - 6:30AM EST) Over a 90-

minute session with EPRI's President & CEO Arshad Mansoor, panelists will share insights into the increasing imperative to consider resilience and adaptation measures along with the economic, social, and policy-design challenges and opportunities impacting the global energy transition across multiple continents.

WEDNESDAY November 9, 2022

8:00 AM ET Energy: Argentina Distributed Renewable Generation (8:00-11:00 a.m. EST)
https://us02web.zoom.us/s/82771385315?pwd=eXFuWXVsUjBqOTBSMGNTam1CL2ZLZz09

10:00 AM ET Telecom: Fiber BB Ass'n: Fiber is Not Enough
https://register.gotowebinar.com/register/7633962435063758350

Cable had a broadband speed advantage for a decade, and they marketed to their advantage. Fiber took the lead on speed and followed the same marketing strategy as Cable. The reality is that broadband speed doesn't matter nearly as much to the consumer experience as we pretend it does. The success of fixed wireless broadband has made that plain. Fiber companies can't afford to be complacent. They need to invest in other elements of the customer experience, or risk being ill prepared when others in the industry change the narrative. Join us for Fiber for Breakfast with New Street Research's Managing Partner, Jonathan Chaplin, as he shares insights from his latest research.

11:30 AM ET Cross Sector Bracewell's Policy Resolution Group: 2022 Midterms Post-Election Webinar. Register

*Join **Bracewell's Policy Resolution Group** for our award-winning political and policy analysis virtual event: **The PRG Pulse 2022 Midterms Post-Election Webinar**. Listen live and ask questions as the PRG team breaks down what the 2022 election results mean for control of Congress and the policy agenda in Washington. Our team will guide a lively discussion on topics such as energy and environmental policy, Congressional oversight, and the policymaking options for the White House. This complimentary event will feature PRG's lobbyists, attorneys, and strategic communications professionals – as well as some special guests. PRG brings government relations, strategic communications and legal representation together to help clients navigate the complex federal landscape. PRG Pulse is an up-to-the-minute multimedia resource on elections. For more, subscribe to our podcast, The Lobby Shop on **Spotify**, **Apple Podcasts**, **SoundCloud**, **Stitcher***

1:00 PM ET Energy Clean Energy Group: Innovative Avenues to Public Participation in Clean Energy Development, Featuring CT & WA Register

This CESA webinar will highlight two impressive and impactful state programs that are accelerating the development of clean energy while increasing public participation in the process: Connecticut's Green Liberty Bonds program, which is modelled after the war bonds of the 1940s, allows individual investors to purchase bonds in low-dollar denominations, enabling people to directly participate in the green economy and earn a return on their investment. In Washington, the 2021 State Energy Strategy provides a roadmap for the state to meet its critical and ambitious energy and climate goals: transitioning to 100% clean electricity by 2045 and reducing greenhouse gas emissions. In this webinar, representatives from the CT Green Bank and the Washington Department of Commerce will present their programs and answer questions from the audience. CESA's Vero Bourg-Meyer will *moderate.* ***REGISTER HERE***.

1:00 PM ET Telecom: Fiber BB Ass'n: Meeting BEAD Affordability Requirements
https://us02web.zoom.us/webinar/register/WN_TrKPVVuITYSn3BaGLPJJwA

FBA – holding series of monthly educational webinars for State Broadband Leaders, NTIA, communities, and other key stakeholders focused on key topics related to implementation of the $42.45B NTIA BEAD broadband infrastructure funding program. This is a once-in-a-lifetime opportunity to connect every American with broadband, elevating quality of life for generations to come. Please join us for our third installment, **Meeting BEAD Affordability Requirements***, on November 9 at 1PM ET, delivered by ACA Connects – America's Communications Association, and NCTA – The Internet & Television Association. In order to receive funding from the BEAD program, states are required to submit a "middle-class affordability plan" and providers must offer a low-cost broadband option to eligible subscribers. Join ACA Connects and NCTA experts to learn how your state can meet the NTIA affordability requirements. Upcoming 30-minute webinars will be held the second Wednesday of each month at 1PM ET. The next dates and topics include: December 14 - Permitting/Rights of Way January 11 - Cyber Security Replays of our first two installments in this series of monthly webinars are also available. To view* ***Broadband Supply Chain Mitigation Strategies for NTIA BEAD****, presented on September 14, click here. To view* ***Leveraging BEAD for Workforce Development****, presented on October 12, click here*

2:00 PM ET Cross Sector NARUC SCRID: Critical Infrastructure Security - the Key to preserving Our Quality of Life Register

Retired Air Force Colonel Lonnie Garris will discuss cyber risk to North American Critical Infrastructure; Technology and the impediments to distributed grid integration and diversity & inclusion as an imperative to solve critical infrastructure problems.

3:00 PM ET Energy FERC: Winter Energy Market and Reliability Assessment for States join via the following link: https://ferc.webex.com/ferc/j.php?MTID=mf84073b63e128e013bd2e42ac1480aad

Please find attached a calendar entry for a briefing Federal Energy Regulatory Commission staff will be giving on November 9, 2022, at 3:00 p.m. on the Winter Energy Market and Reliability Assessment ("Assessment"). To accept the request, please click on the attachment and save it to your calendar. You can also join via the following link: https://ferc.webex.com/ferc/j.php?MTID=mf84073b63e128e013bd2e42ac1480aad For background, Commission staff issued the Assessment on October 20, 2022. You can find a copy of the press release discussing the Assessment here and below. This briefing is intended to provide an overview of the Assessment and respond to questions. Since we expect a large turnout, we will take questions via the chat function and then we can take emailed questions from those who did not get a chance to ask their question. Looking forward to seeing everyone on November 9. Thank you!

FERC Winter Assessment: Keeping the Focus on Reliability, Demand, Prices

Presentation | Report U.S. electricity markets are projected to have adequate amounts of generating capacity to maintain reliable operations this winter, though grid operators in certain regions may face challenges during periods of extreme weather, according to the FERC staff Winter Energy Market and Reliability

Assessment. This year's report, presented to the Commission at its October meeting, notes the National Oceanic and Atmospheric Administration forecasts above average temperatures this winter for most of the U.S., except for the Pacific Northwest and West-North Central region of the country. Rising demand for natural gas, mostly for gas exports, and lower than average natural gas storage inventories are driving expectations that natural gas prices for the coming winter will be higher than last year. Prices are expected to be particularly high in New England, which is dependent, in part, on LNG imports. "The impacts of rising natural gas prices on consumers are top of mind. Although FERC does not regulate natural gas prices, we do have authority to address market manipulation and we intend to remain particularly watchful during this period of inflation and high price sensitivity," FERC Chairman Rich Glick said. Today's report comes as FERC continues to address concerns about winter energy challenges around the country. "This assessment highlights that all regions have adequate resources for a normal winter," Glick said. "But it's important that we recognize regions could still face challenges in extreme weather conditions, and often these challenges vary from region to region. In New England, generation capacity is adequate, but fuel constraints will continue to challenge the region in the winter. In contrast, Texas has robust capacity but does not have sufficient ability to import power from its neighbors. It is imperative that we recognize each region's unique challenges and work with them to plan and solve on a customized regional basis." Last month, the Commission convened a day-long New England Winter Gas-Electric Forum to consider the region's electric and natural gas system challenges during the winter. Tomorrow, the North American Energy Standards Board (NAESB) convenes the second of four meetings to identify solutions to the reliability challenges facing the nation's natural gas and bulk electric systems. FERC Chairman Glick and North American Electric Reliability Corporation President and CEO Jim Robb urged NAESB to hold these meetings as one of the key recommendations from the joint FERC-NERC-Regional Entity report on the 2021 Winter Storm Uri freeze. Rob Thormeyer Director, State, International, & Public Affairs Division Federal Energy Regulatory Commission Robert.thormeyer@ferc.gov (w) 202-502-8694 (cell) 202-465-5717

3:00 PM ET Telecom USAC: Lifeline Webinar - RAD 101
https://register.gotowebinar.com/register/3957422043456602639

Date: *Wednesday, November 09, 2022* ***Time:*** *03:00 pm ET – 04:00 pm ET*

4:00 PM ET Water: The Water Research Foundation: Purified Recycled Water Demonstration Design & Reuse Communication Toolbox *Register*

This webcast is free and open to the public. Many water utilities are considering water reuse to diversify their water supply portfolios. Treating wastewater to potable standards is proven and reliable, but public opinion can hinder more widespread implementation of water reuse. When customers are well-informed about the safety and effectiveness of the technologies used, most water customers and stakeholders become accepting of water reuse. One method to educate customers is through demonstration facilities and educational exhibits. This webcast will present the findings of Potable Reuse Demonstration Design & Toolbox (4979). The project team will share effective communication strategies and present a toolbox of resources for integrating public education and engagement elements at demonstration facilities. The toolbox includes example demonstration facilities, case studies of exhibit testing, pre-planning worksheets and checklists, and sample RFPs for installation of exhibits and development of in-person or virtual tours.

Presenters: Eric Eckl, Owner, Water Words That Work Carrier Del Boccio, Recycled Water Practice Leader, Woodard & Curran Ruth Bielobocky, Owner, Ion Design

7:00 PM ET Energy: EPA: Listening Session 2: Nov. 9 from 7:00-9:00pm ET for public input on the IRA's Greenhouse Gas Reduction Fund

For more information – see: **EPA: Biden-Harris Administration Seeks Public Input on Inflation Reduction Act's Greenhouse Gas Reduction Fund**

THURSDAY November 10, 2022

12:00 PM ET Energy: FERC: Noon - 5:00 pm Annual FERC Commissioner-Led Reliability Technical Conference

https://www.ferc.gov/news-events/events/annual-commissioner-led-reliability-technical-conference-11102022

12:15 PM ET Telecom: University of Pennsylvania: Meaningfully Connected: The Politics, Policies, and Polities of Digital Scarcity

This is basically to hear from a person who believes everyone has a right to broadband access which is necessarily subsidized by others. During the height of the pandemic and now in this present time of variants, policymakers, public interest groups, researchers, and citizens have been preoccupied with the lack of connectivity in the United States. Conversely, they have been at pains to ensure that everyone in the country has access to high speed, affordable internet ("broadband"). At the highest levels of power, this push for connection resulted in the passage of the 2021 Infrastructure Investment and Jobs Act (IIJA). This bill, now known as the Bipartisan Infrastructure Law (BIL), committed $65 billion to broadband deployment, affordability, and equity. Indisputably it is the largest public investment in telecommunications in the history of the United States. With the subsequent creation of the flagship broadband programs of the IIJA, the Broadband Equity Access and Deployment (BEAD) Program and the Affordable Connectivity Program (ACP), all eyes turn to another, lingering question: what does it mean to be meaningfully connected? Large providers campaign for reduced commitments and greater access to public monies are praised for their participation in affordable programs. Notably, they push for the retention of broadband speeds, and a policy platform of technological neutrality. Public and consumer groups argue for ubiquitous fiber optics and symmetric broadband speed definitions. Meanwhile, hundreds of thousands of households - rural, remote, tribal, low-income, and minority - remain un- and under-connected. This talk ruminates on the question of meaningful connectivity, offering qualitative evidence from previous and current research projects that investigate how policy decisions are lived, articulated, and experienced throughout the country. Drawing from critical political economy, critical geography, and lived theology, Christopher Ali argues that meaningful connectivity is part of a spectrum of power. The withholding of connectivity, be it in infrastructure or price, represents one side of the spectrum, where un- and under-connected households are told to wait their turns. Tipping the balance towards the user, the citizen, and the *consumer, and thus moving from a state of digital scarcity to digital abundance, means stripping away broadband's market-based logics and imbibing connectivity with the discursive markers of public utilities, interests, services, and maybe even rights.*

2:30 PM ET Telecom: Bipartisan Policy Center: Tech Policy on the Horizon : Plans for the 118th Congress **Register**

The upcoming election will have a significant impact on the legislative agenda for the technology sector in the next Congress. Republicans and Democrats have proposed different approaches, but both sides agree the current regulatory framework is not equipped to respond to challenges dominant platforms and emerging technologies present. Join BPC "experts" to preview how a likely divided 118th Congress could collaborate on technology regulation and make a positive impact on our democracy. This bipartisan panel will discuss the trends, issues, and policies that will shape the tech policy debate in the new Congress, focusing on content moderation(???), cybersecurity, crypto, and data privacy.

3:00 PM ET Energy: DOE: Electric Vehicle Grid Assist - Accelerating the Transition: Planning for the Future, https://www.evgridassistwebinars.com/

SUNDAY NOVEMBER 13, 2022 – NARUC ANNUAL MEETING IN NEW ORLEANS BEGINS – IN PERSON ONLY.

MONDAY November 14, 2022

9:00 AM ET Cross Sector: ITIF: The Costs and Benefits of Security-By-Design in the Cyber Resilience Act Register.

MONDAY, NOVEMBER 14, 2022, 9:00–10:00 PM EDT The European Union's recently presented Cyber Resilience Act seeks to bolster the cybersecurity of digital products used by EU consumers. By imposing cybersecurity requirements on hardware and software products, the Act aims to address gaps in Europe's existing cybersecurity regulatory framework through security-by-design. Security-by-design requires businesses to implement security features, either specific or abstract, at the onset or design phase of a project. Advocates argue that this approach will protect Europe's collective security and minimize cybersecurity incidents, especially for the Internet of Things. Opponents worry that this approach will not apply appropriately to future technological advancements and could even stifle innovation. Join the Center for Data Innovation for a discussion on the Cyber Resilience Act, the basics of security-by-design, and whether a security-by-design approach will effectively tackle future cybersecurity risks. ***Learn more and register.***

TUESDAY November 15, 2022

3:30 AM ET Energy: EPRI at COP27: Approaches for Economy-Wide Decarbonization REGISTER

THIS IS IN EGYPT – SO YES ITS 3:30 AM EASTERN – 2 AM CENTRAL – 1 AM MOUNTAIN – 12 AM PACIFIC - TUESDAY, NOVEMBER 15, 2022 10:30 - 12:00PM EET (3:30 - 5:00AM EST) EPRI Vice President of Corporate Affairs Katie Jereza hosts an expert panel to discuss how deployment and implementation of technologies such as hydrogen, batteries, and advanced nuclear can be accelerated and what impact they may play in global decarbonization efforts TUESDAY, NOVEMBER 8, 2022 12:00 - 1:30 PM EET (5:00 - 6:30AM EST) Over a 90-minute ***REGISTER***

10:00 AM ET Energy: FERC: 9-11:30 AM CT [Fifth Meeting Of The Joint Federal-State Task Force On Electric Transmission]()

1:00 PM ET Telecom: Fiber BB Assn: Scaling Up for Large Fiber Deployments in Resource Challenged Times https://register.gotowebinar.com/register/6672711094048169227

The Fiber Broadband Association invites you to join us for a webinar on Tuesday, November 15, at 1:00pm EST. Over the past year and a half, the pandemic has wreaked havoc on supply chains across the world. In the engineering and construction space, in particular, building materials are still in short supply. The current situation has been especially difficult for businesses with complex supply chains, as their production is vulnerable to disruption. In addition, new federal broadband grants are bringing more fiber deployment projects to the market than ever before. The current labor shortages throughout the industry which will be further stressed with the additional demand of new projects funded and planned for market deployment. It can be hard to fathom how to navigate successful completion of any large-scale infrastructure project as resource deficiencies and supply-chain issues are significant and widespread. It takes thoughtful planning, collaboration and partnerships to embark on expansive fiber deployments during these resource challenged times. How can companies overcome the disruption and supply chain woes? This webinar will discuss the significant growth of the fiber market and solutions to help effectively manage scalability, construction resource challenges and logistics while adhering to strict timeline demands. Black & Veatch and Wesco will outline the benefits of a solid Program Management Office (PMO) structure to ensure your projects can scale effectively and how to plan for the gaps in resources and equipment availability to ensure fiber deployment success.

2:30 PM ET Energy: Senate EPW: [IIJA Opportunites for Local Jurisdictions to address Transportation Challenges]()

WEDNESDAY November 16, 2022

10:00 AM ET Energy: NRC: Presubmittal Meeting on NEI 22-01 License Termination Process

PUBLIC MEETING ANNOUNCEMENT Title: Presubmittal Meeting on NEI 22-01 License Termination Process November 16, 2022, 10:00 AM to 12:00 PM ET Category: This is an Observation Meeting. This is a meeting in which attendees will have an opportunity to observe the NRC performing its regulatory function or discussing regulatory issues. Attendees will have an opportunity to ask questions of the NRC staff or make

comments about the issues discussed following the business portion of the meeting; however, the NRC is not actively soliciting comments towards regulatory decisions at this meeting.

Purpose: Meeting between NEI and NRC to discuss NEI 22-01 guidance for reactor licensees on the License Termination Process to be submitted for NRC review in late 2022. NEI will be presenting information on the contents of the submittal and requesting feedback from NRC. Members of the public will have an opportunity to ask questions at specific times designated in the agenda.

Contact: Tanya Hood 301-415-1387 tanya.hood@nrc.gov Cynthia Barr 301-415-4015 cynthia.barr@nrc.gov NRC Office of Nuclear Material Safety and Safeguards

Participants: External Nuclear Energy Institute (NEI)

Webinar:
https://teams.microsoft.com/registration/dRTQ6LXDakOgZV3vTGT1Lg,hHSayXBgLUeFTgycPab7Hg,H76ZUH0luEGKXQCsPEQQ7Q,P6UDWDhdgE6Kq8iFwo58hw,h0NJ-5tEn0KKnJ6rER_33g,lETLKeM5Fk-amcSkPDUbeA?mode=read&tenantId=e8d01475-c3b5-436a-a065-5def4c64f52e&webinarRing=gcc
Comments: This hybrid workshop will be held in person at NRC Headquarters, 11555 Rockville Pike, Rockville, MD 20852. A virtual option through Teams is also available. To register for the virtual Teams meeting, please fill out the form at the URL provided under the webinar
section. To register for in-person attendance, please reach out to the contacts. For an audio only option, please dial 1-301-576-2978 and use Phone Conference ID: 505 493 326#

1:00 PM ET Telecom: USTelecom: Broadband Investment Forum Register

USTelecom's annual national Broadband Investment Forum brings together leaders in broadband connectivity – from the policy community in Washington and the states to CEOs and senior executives from the nation's innovative broadband companies. RegisterNate Denny Deputy Secretary for Broadband and Digital Equity, North Carolina Marc C. Ganzi Chief Executive Officer DigitalBridge Kathy Grillo SVP, Public Policy & Government Affairs, Verizon Dr. Tamarah Holmes Director Virginia Office of Broadband Melissa Mann VP, Government Affairs & Public Policy, Lumen Bob Mudge Chief Executive Officer Brightspeed Bob Udell President & CEO, Consolidated Communications Jonathan Spalter President & CEO, USTelecom

1:00 PM ET Energy: Clean Energy Group: Resilient Solar+Storage for Cooling Centers Register

Extreme heat is responsible for more weather-related deaths than any other weather event. A new report by Clean Energy Group examines the opportunity for resilient solar+storage to provide reliable backup power to cooling centers. The report, Resilient Solar and Battery Storage for Cooling Centers: Mitigating the Impacts of Extreme Heat on Vulnerable Populations, explores health impacts and project economics, and it includes seven case studies from across the country. In this Clean Energy Group webinar, report author Marriele Mango will present her findings. She will be joined by Nate Mills from American Microgrid Solutions, and Nicole Lim from the California Indian Museum and Cultural Center, which is in the process of developing a resilient solar+storage installation to support cooling center operations.
REGISTER HERE

2:00 PM ET Water: EPA/Energy Star: Optimizing Cooling Tower Water Efficiency Using Existing Routines Register

November 16, 2022 at 2 pm Eastern Register here Cooling tower water efficiency is determined by both operational settings, such as water quality set point, and the performance of mechanical equipment, such as proper valve function. One or both system components often go awry, causing acute and chronic water waste. EPA's WaterSense Program and Annikki Chamberlain from Mimir Water will teach you how to use your existing procedures to determine your optimal cooling tower efficiency and quickly resolve inevitable mechanical problems. By incorporating these no-cost to low-cost strategies into daily routines, you can ensure the long-term water efficiency *of your cooling system.*

2:00 PM ET Water EPA: Real-Time Risk Characterization Tool for Harmful Algal Blooms Register

2:00-3:00 p.m. ET (optional Q&A session from 3:00-3:15 p.m.) In response to two large harmful algae bloom (HAB) events on the Ohio River in 2015 and 2019, a risk characterization tool/web application was developed. The tool has been in use by the Ohio River Valley Water Sanitation Commission for two bloom seasons, serving to predict the probability of HABs based on river flow conditions and as a water data monitoring utility. The tool is accessible to the public at url: **https://orsanco-hab.shinyapps.io/shiny-ohio-river/#.** This presentation will overview the science of large river HABs and the historical data that was used to develop a risk characterization framework and then a probabilistic prediction of HABs for 20 locations spanning the entire length of the Ohio River. Next, a general overview of the web-based application will be given, including details about data acquisition, data management, and the underlying statistical models. Finally, perspectives on using the tool to actively monitor the river's water quality and make decisions about HAB sampling and risk communication will be given by the tool's primary user.

6:00 PM ET Energy: FERC: System Alignment Program Project Public Scoping Meeting - East Tennessee Natural Gas, LLC Docket No. PF22-8-000." Call in number: 888-790-2037 Participant passcode: 8945002

THURSDAY November 17, 2022

10:00 AM ET Energy: FERC: November 17, 2022 Open Meeting

10:15 AM ET Cross Sector: Senate Homeland Security: Threats to the Homeland https://www.hsgac.senate.gov/hearings/11/04/2022/threats-to-the-homeland

10:30 AM ET Telecom: FCC: November 2022 Open Commission Meeting

1:00 PM ET Energy: LBNL: *Residential Solar-Adopter Income & Demographic Trends*. Register: https://lbnl.zoom.us/webinar/register/WN_sDcc_DKnTpyByQBKkKX5VQ

The report is based on address-level data for 2.8 million residential households across the country that have installed solar onsite. It describes trends in solar-adopter household income levels, race and ethnicity, language preference, rurality, education levels, occupation, age, home value, and location within a "disadvantaged community". The report also describes income differences across system ownership models, installers, system sizes, stand-alone vs. paired solar-plus-storage systems, and systems on multi- vs. single-family buildings. This latest update includes data on systems installed through 2021. The report is accompanied by an online data visualization tool that enables users to further explore the data from the report. The authors will also host a webinar highlighting key findings from this study on November 17th at 10:00 am Pacific / 1:00 pm Eastern. Register for the webinar here: https://lbnl.zoom.us/webinar/register/WN_sDcc_DKnTpyByQBKkKX5VQ The following are a few select findings from the latest update: ***Solar adopters span all income ranges. (but the majority are high income households)*** *Solar adopters include households across all income levels, as shown in Figure 1 on the left. For example, roughly one third of all households that installed solar in 2021 had incomes between $50,000 and $100,000, while 15% of adopters were below that range and roughly half were above that range. So 52% had incomes over over $100,000 and some percentage of the other 1/3rd made up to $100,000....* ***Solar adopter incomes***

skew high, compared to the broader population. *As shown in Figure 1 on the right, the median household income for 2021 solar adopters was $110,000, compared to $79,000 for all U.S. owner-occupied households and $63,000 for all U.S. households (including renters). The disparity in these national numbers partly relates to the fact that close to half of residential solar adopters were in California, a relatively high-income state. However, as shown in the report, even at the individual state level, solar-adopter incomes consistently skew high.* ***Solar adoption has been slowly shifting toward less affluent households over time.*** *The median household income of 2010 solar adopters is $129k, compared to $110k for 2021 solar adopters, as shown by the Absolute Income line in the left-hand figure below (which is based on current incomes for all solar adopters). The shift toward less affluent households partly reflects a "deepening" of solar markets, as indicated by the Relative Income line, which compares solar-adopter incomes to all households in the same county and shows a steady downward trend. Solar markets are also "broadening" into progressively less affluent states, as shown in the figure on the right-hand side. That latter trend has been driven to a large extent by solar market growth in Texas and Florida, which fall respectively within the sets of Middle- and Low-Income states.* ***The share of the solar market in disadvantaged communities has been rising over time.*** *The U.S. Department of Energy has developed a designation for "disadvantaged communities" (DACs) that considers a diverse set of criteria related to energy burden, environmental and climate hazards, socio-economic vulnerabilities, and fossil dependence. Using these designations, Figure 3 shows the that the percentage of residential solar installations in DACs more than doubled from 5% in 2010 to 11% in 2021. Despite that improvement, DACs still remain under-represented relative to their share of the population as a whole (18% of households).*

1:00 PM ET Energy Clean Energy Group: Behind-the-Meter Energy Storage: Comparing State Policies Register

A variety of studies and disparate datasets track state energy storage polices, but these datasets do not cover all behind-the-meter (BTM) related storage policy. Moreover, these databases do not align these policies with the policy stacking framework. Thus, it is unclear what BTM storage policies are adopted across the country, what should comprise a complete storage policy framework or stack, and how states policies compare against that stack. A new report by the National Renewable Energy Laboratory (NREL) addresses this gap in the literature by developing a state policy stack for BTM battery storage compared across all fifty states. This first-of-its-kind BTM storage policy stack includes 11 parent policy categories, and 31 associated policies divided across the market preparation, creation, and expansion policy components. In this webinar, hosted by CESA for the Energy Storage Technology Advancement Partnership, NREL's Jeff Cook will present the report's findings.

APPENDIX B

ENERGY SECTOR NEWS

1107 Resiliency: Electrek: A quarter of US coal-fired power will retire by end of 2029 – and gas may have peaked

1107 Cyber - Monday - DOE warned of growing threats of grid cyberattacks through renewables and customer-owned devices like rooftop solar, electric vehicles, batteries, and smart thermostats. DERs open up new potential vulnerabilities – aka a much larger attack surface.

1107 FERC NOPR ON CYBERSECURITY INCENTIVES - Joint Comments of MD PSC & PA PUC IN RM22-19. AND - **Initial Comments of California Public Utilities Commission and California Department of Water Resources** AND - **Comments of Iowa Utilities Board**

1107 Energy Policy - Coal: President Joe Biden's promise to shut down coal plants across America and build more wind and solar were met with criticism by Sen. Joe Manchin (D-W.Va.) who called Biden's comments "offensive and disgusting," signaling more trouble for the Democratic Party before the midterm elections tomorrow as Democrats fight to keep their 50-50 Senate majority. In addition to his calls for Biden to apologize to miners, Manchin said the president's comments have led to a loss of trust with the American people as it "seems his positions change daily depending on the audience and politics of the day." (Politico) see also - Biden Embarrasses Joe Manchin *The Editorial Board, The Wall Street Journal* The Senator is upset the President told the truth about the plan to kill coal plants.

1107 Climate Change: Why America's climate law is causing rifts at COP 27 *Jean Chemnick, E&E News*

President Joe Biden and other U.S. officials think they finally have a winning climate message to share with the world — even if not everyone agrees.

1107 5 tensions that could derail the climate conference *Sara Schonhardt, Politico* Set against a backdrop of severe weather disasters, this year's gathering of world leaders collides with soaring energy costs, food insecurity and a looming recession.

1107 New U.S. message on climate change: Make China pay *Zack Colman and Karl Mathiesen, Politico* The U.S. is softening its resistance to paying developing countries for loss and damages suffered from climate change, and it's pointing the finger at China's massive emissions as well.

1107 Renewables: DTE Electric proposes $9B spend on 5.4 GW renewables, 760 MW storage, coal-to-gas power plant switch *Ethan Howland, Utility Dive* DTE Electric's "proposed course of action," or PCA, calls for retiring two coal-fired Monroe power plant units totaling 1,535 MW in 2028, 12 years ahead of previous plans. It would shutter the plant's remaining units in 2035, completing the utility's exit from coal-fired power.

1107 Natural Gas & Energy Efficiency: Washington state Building Code Council voted Nov. 4 to require all new buildings to use electric heat pumps, which would give the state some of the country's strictest energy efficiency codes. The rule is set to be finalized in January and take effect July 1, 2023. Opponents called the requirements premature and said they would drive up the cost of building new homes and could increase worries about energy reliability.

1107 The Hill: A new apprenticeship requirement could slow federally funded energy projects

1107 RTO: Utility Dive: FERC interconnection reform proposal poses a barrier to Colorado joining an RTO: PUC Chair Blank

1106 GHG: The UN's 27th annual Conference of the Parties climate summit commenced in Egypt on Sunday, with delegates from nearly 200 nations - many on private jets - in attendance. With the war in Ukraine, widespread energy crises and a potential global economic downturn looming, COP27 is slated to have a less ambitious agenda than last year's summit. Reuters

1106 Production: Bullish US oil production growth projections for this year are failing to translate

into actual volume gains as supply chain bottlenecks, cost inflation and declining well productivity continue to plague the oil industry. Many US shale producers, including ConocoPhillips, Pioneer Natural Resources, Chevron and ExxonMobil, have trimmed their production expectations for the full year despite reporting bumper profits.

1106 Solar - California **Public Utilities Commission** to hear oral arguments on rooftop solar rules

1104 Refinery Utilization: US oil refiners plan to capitalize on market tightness and strong profit margins to continue operating their facilities at near-maximum capacity this quarter, company forecasts and analysts suggest. Marathon Petroleum is aiming for 93% utilization of its refining capacity, while Valero Energy, Phillips 66 and LyondellBasell have also set targets above 90%. Reuters

1104 Clean Energy Research: White House announced the Net-Zero Game Changers Initiative, led by a working group of 147 federal agencies, which promises to deliver billions in funding toward 37 "game-changing" energy technologies, including advanced forms of nuclear, solar and geothermal power generation, advanced batteries, and direct air capture and removal, among other technologies. The plan also included a roadmap aimed at kickstarting the development of clean energy tech and research in five key areas including power grids, aviation, fusion energy, efficient buildings, net-zero fuels and industrial products. E&E News

1104 Permitting Proposal: Sen. Joe Manchin (D-W.Va.) said at a conference that he was working to attach his permitting reform plan to the 2023 National Defense Authorization Act, after the proposal failed to make it into a stopgap funding measure in September. (E&E News)

1104 Latham & Watkins: FERC Expands Scope of Affiliation Between Investor and Public Utility - ***More investors in public utilities may now be considered affiliates, thereby significantly increasing compliance obligations and transactions subject to prior FERC approval***. On October 20, 2022, the Federal Energy Regulatory Commission (FERC or the Commission) issued two orders significantly broadening the scope of the terms “affiliate” and “change in control” under FERC regulations and precedent pertaining to the Federal Power Act, as amended. The Commission effectively held that an investor’s right to appoint a board member of a public utility subject to FERC’s jurisdiction (generally, entities that engage in the wholesale sale or transmission of electric energy in interstate commerce, including entities with market-based rate authority) or a board member of a holding company of a public utility who is not independent of the investor creates an affiliate and control relationship between the investor and the holding company or public utility, regardless of the size of the investor’s ownership share in the holding company or public utility. **Read the Client Alert**

The broadened scope of these two terms will have potentially material impacts on investors in FERC-jurisdictional public utilities. For example, affiliation is a central part of the market power analysis required to obtain and maintain authorization to sell power at market-based rates under Section 205 of the Federal Power Act (Section 205).4 In addition, changes in control of public utilities generally require prior authorization from FERC under Section 203 of the Federal Power Act (Section 203); the broader scope of what constitutes change in control will decrease flexibility in structuring corporate transactions and other actions that do not require such approval.5 Accordingly, public utilities that were not previously considered affiliated with other public utilities may now be considered affiliated, and more types of transactions and other corporate actions will require prior FERC approval

Impact on Market-Based Rate Authorizations

Pursuant to Section 205, Congress granted FERC the authority to ensure that wholesale electricity rates are just, reasonable, and not unduly discriminatory or preferential.6 To ensure the justness and reasonableness of sales of electricity at market-based rates, FERC requires entities to obtain authorization to make such sales. To receive and maintain such authorization, public utilities must demonstrate that they lack horizontal and vertical market power.7 This analysis includes the capacity controlled by the public utility and by all affiliates of that public utility in a given region. FERC regulations specify what types of relationships constitute affiliation.8 While a person that "directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of the specified company" is an affiliate of that company,9 "owning, controlling or holding with power to vote, less than 10 percent of the outstanding voting securities of a specified company creates a rebuttable presumption of lack of control."10

Until the Evergy Order, entities that held a 10% or greater interest in a company have generally been considered affiliates of that company under Section 205, whereas entities that held a less than 10% interest in a company were typically not considered affiliates of that company.11 Following the Evergy Order, however, an investor of a company will likely now be considered an affiliate of the company if at least one board member is directly accountable to the investor, regardless of the percentage of shares held by the investor.12 The Commission reasoned that a board member will provide the investor "those rights, privileges, and access, and thus the authority to influence significant decisions involving the public utility holding company."13

Notably, the Commission stressed the importance of the non-independence of a board member as the triggering factor that can rebut the presumption of lack of control in the Evergy Order.14 The Commission specifically held that Elliott Management Corp. was not an affiliate of Evergy, despite Elliott's power to negotiate for the appointment of board members, because those board members are independent of, and not compensated by, Elliot.15 In contrast, FERC distinguished this relationship from Evergy's relationship with Bluescape Energy Partners, LLC, in which Bluescape's executive chairman sat on Evergy's board.16 The Commission found that the non-independence of this board member rebutted the presumption against control.17 Because the Commission did not define the terms "independent" or "accountable," it may be difficult to determine whether its ruling applies in cases in which an investor appoints a board member to a company that is not an officer or director of the investor. Notably, the Commission does not indicate whether the definition of "independent" is tied to the definition of an "independent" board member under the New York Stock Exchange rules.

In this case, the Commission determined that the key distinction between Bluescape (which was found to have control) and Elliott (which was found to not have control) was that "Evergy has appointed one of Bluescape's own directors, its Executive Chairman, to the Evergy Board."18

Impact on Mergers and Acquisitions

Just as the Commission instituted a change in law regarding affiliation under Section 205 with the Evergy Order, it instituted a corresponding change in law under Section 203 regulations with the TransAlta Order.19 Section 203 requires prior authorization from FERC to consummate certain transactions that involve a change in control. Yet, the Commission has established a rebuttable presumption that a change in control does not occur if an investor acquires less than 10% of the outstanding shares of a company.20

Under the TransAlta Order, for the purposes of Section 203, when an investor appoints a board member who is one of "an investor's own officer or director, or other appointee accountable to the investor," the transaction will generally require prior Commission approval as a change in control.21 The Commission has now established a rule that such a board member "functions to rebut the presumption" of a lack of control,22 and held that its change in law announced in the TransAlta Order would apply on a "going forward" basis.23

Conclusion

The Affiliation Orders reflect an important change in law at FERC, and public utilities and their investors should be aware of these changes when evaluating transactions. While FERC did not provide clear guidance regarding general compliance requirements, FERC-jurisdictional enti ties and investors therein should re-examine their relationships to determine whether they may be deemed affiliate relationships in light of the Evergy Order.

1104 **Brownstein Hyatt Farber Schreck LLP: IRS Solicits Public Comments on Additional Inflation Reduction Act Energy Tax Credits** - **View original**

Earlier today, Nov. 3, the IRS issued three new public notices concerning upcoming energy guidance on five of the tax incentives included in the recently passed Inflation Reduction Act (IRA). Each notice includes a brief description of the provision as drafted in the legislation, providing some preliminary insights on how these credits may be interpreted.

These three notices follow six initial public notices released last month that focused on the electricity and advance manufacturing credits, as well as new concepts like the prevailing-wage and apprenticeship requirements that affect many of the credits included in the IRA. Public comments on the previous notices must be submitted by Nov. 4.

More information on these credits will be provided as part of a White House briefing on the afternoon of Nov. 4 concerning myriad climate and environmental justice programs. Attendees can register for the webinar here.

In the final section of each new notice, several questions are posed related to the implementation of each credit. Many of these questions concern the ongoing development of definitions and parameters for new, previously undefined terms. **The IRS requests responses to this latest round of questions by Saturday, Dec. 3.**

These notices include questions on the expanded Sec. 45Q Carbon Oxide Sequestration Credit and novel Sec. 45V Clean Hydrogen Production Credit. The Treasury Department hopes that these credits will help spur the creation of new domestic energy industries in conjunction with funding for hydrogen hubs provided by the Infrastructure Investment and Jobs Act, which was enacted in November 2021.

The three notices are soliciting public feedback on the following Internal Revenue Code sections:

Commercial Vehicles and Refueling Property — Notice 2022-56

Sec. 45W, Qualified Commercial Clean Vehicles Credit

Sec. 30C, Alternative Fuel Vehicle Refueling Property Credit

Carbon Capture — Notice 2022-57

Sec. 45Q, Carbon Oxide Sequestration Credit

Hydrogen and Fuel Production Credits – Notice 2022-58

Sec. 45V, Credit for Production of Clean Hydrogen

Sec. 45Z, Clean Fuel Production Credit

1104 **EE Online: FERC Staff Issues Draft Environmental Impact Statement for N.D. Wahpeton natural gas expansion project for comment by December 27, 202** FERC Staff has prepared a draft environmental impact statement (EIS) for the Wahpeton Expansion Project (Project).

WBI Energy Transmission, Inc. (WBI Energy) proposes to construct and operate a 60.5-mile-long, 12-inch-diameter natural gas pipeline in Cass and Richland Counties, North Dakota. Construction and operation of the proposed facilities would provide 20,600 equivalent dekatherms of natural gas per day to Kindred and Wahpeton, North Dakota.

The Project would include the following natural gas facilities:

a new 60.5-mile-long, 12-inch-diameter natural gas pipeline;

minor modifications to WBI Energy's existing Mapleton Compressor Station;

a new Montana Dakota Utilities (MDU)-Wahpeton Border Station;

a new MDU-Kindred Border Station;

seven new block valve settings;

four new pig launcher/receiver settings; and

ancillary facilities.

The EIS was prepared in compliance with the requirements of the National Environmental Policy Act (NEPA), the Council on Environmental Quality regulations for implementing NEPA (40 Code of Federal Regulations [CFR], 1502.13), and FERC regulations implementing NEPA (18 CFR 380).

FERC staff concludes that construction and operation of the Project would result in some adverse environmental impacts. Most of these impacts would be temporary and occur during construction (e.g., impacts on wetlands, land use, traffic, and noise). With the exception of climate change impacts that are not characterized in the EIS as significant or insignificant, staff conclude that Project effects would not be significant. As part of the analysis, Commission staff developed specific mitigation measures (included in the draft EIS as recommendations). Staff recommend that these mitigation measures be attached as conditions to any authorization issued by the Commission.

The draft EIS comment period closes on December 27, 2022. The Commission will take into consideration staff's recommendations when it makes a decision on the Project.

1104 Energy Policy: Reps. Westerman (R-AR) and Thompson (R-PA), likely the chairs of the Natural Resources and Agriculture panels in the next Congress sent a letter Thursday – citing the Forest Service's recommendation that federal lands around the Boundary Waters Canoe Area Wilderness in northeastern Minnesota should not be available for mining over the next 20 years, among other issues - raises questions as to whether the agency improperly circumvented Congress using the regulatory process.

The Honorable Thomas J. Vilsack – Secretary - U.S. Department of Agriculture

Dear Secretary Vilsack

We write to bring to your attention West Virginia v. EPA, a recent Supreme Court decision that clarified the limitations of certain agency action.1 Although Article I, Section 1 of the United States Constitution vests "all legislative powers" in Congress,2 the Biden administration has largely relied on executive action to advance its radical agenda.

For example, in his first year, President Biden issued more executive orders3 and approved more major rules4 than any recent president.

Such reliance on the administrative state undermines our system of government. Our founders provided Congress with legislative authority to ensure lawmaking is done by elected officials, not unaccountable bureaucrats. Given this administration's track record, we are compelled to underscore the implications of West Virginia v. EPA and to remind you of the limitations on your authority.

In West Virginia v. EPA, the Court invoked the "major questions doctrine" to reject an attempt by the Environmental Protection Agency (EPA) to exceed its statutory authority.5 As the Court explained, "[p]recedent teaches that there are 'extraordinary cases' in which the 'history and breadth of the authority that [the agency] has asserted,' and the 'economic and political significance' of that assertion, provide a 'reason to hesitate before concluding that Congress' meant to confer such authority."6 Under this doctrine, an agency must point to "clear
congressional authorization for the authority it claims."7 However, the EPA could not point to such authorization. Rather, the EPA "discover[ed] an unheralded power representing a transformative expansion of its regulatory authority in the vague language of a long-extant, but rarely used, statute designed as a gap filler."8 Notably, such discovery "allowed [EPA] to adopt a regulatory program that Congress had conspicuously declined to enact itself."9 As a result, the Court rejected the EPA's attempt to so plainly exceed its statutory authority.

Unfortunately, EPA's attempt to invent new authorities is not unusual for the Biden administration. Recently, the Court struck down the Centers for Disease Control and Prevention's attempt to impose an eviction moratorium10 and the Occupational Safety and Health Administration's attempt to impose a vaccine or testing mandate.11 Thankfully, in West Virginia v. EPA, the Court made clear that such reliance on the administrative state will no longer be allowed. To be clear, "the Constitution does not authorize agencies to use pen-and-phone regulations as substitutes for laws passed by the people's representatives."12 In the United States, it is "the peculiar province of the legislature to prescribe general rules for the government of society."13

The Forest Service (FS) at the U.S. Department of Agriculture (USDA) falls within the jurisdictions of the House Committee on Natural Resources and the House Committee on Agriculture (the Committees). Under the Biden administration, the FS's actions have called into question whether the agency is exceeding its authority or acting purely for political purposes. As
a result, the FS is hampering our nation's development of domestic resources and preventing the implementation of management practices need to maintain healthy forests.

Several actions by FS raise significant concerns that the agency is ignoring scientific conclusions and departmental processes in order to advance President Biden's political agenda. As demand for minerals continues to increase, the Biden administration repeatedly stifles domestic development of our natural resources. For example, on January 15, 2021, the FS
completed a Final Environmental Impact Statement (FEIS) and draft Record of Decision (ROD) for the Resolution Copper Project.14 Yet, less than two months later, on March 1, 2021, USDA directed FS to rescind both the FEIS and draft ROD.15 Despite the completion of a FEIS, the Biden administration is initiating a lengthy reexamination process, further delaying production of copper.

Additionally, the Biden administration reversed decisions allowing for the development of the Duluth Complex, one of the largest undeveloped mineral reserves in the world.

On September 28, 2021, the FS submitted an application for withdrawal of forest lands in the Rainy River Watershed of the Superior National Forest.16 The FS proposed a 20-year withdrawal, as well as a two-year segregation period for the area.17

Mirroring the actions of USDA under the Obama administration, the Biden administration is shutting down our nation's ability to develop critical mineral resources.

President Biden continues to take executive actions, leading the FS to overstep its authority. For example, through Executive Order (EO) 1407218, the management of our national forests will continue to be hampered. Instead of allowing FS to focus on critical forest management projects, this EO will divert resources away toward an onerous exercise that will do nothing to protect old growth forests. Healthy forests are essential to ecosystems, but do not happen by chance. Active and science-driven management is necessary to maintain forests that are healthy and resilient to wildfires. The directives of EO 14072 call into question whether the FS will prioritize the management projects necessary for healthy forests.

Further, by declaring the Camp Hale-Continental Divide National Monument, President Biden utilized the Antiquities Act to establish a monument on lands managed by the FS.19

Misusing this authority to designate a 53,804-acre monument calls into question whether the President is adhering to the requirement to designate "the smallest area compatible with the proper care and management of the objects to be protected."20 Unfortunately, this action results in the FS creating a de facto wilderness area, significantly limiting the public's access to the public lands. Through this decision, President Biden implemented policies Congress opted not to pursue. If Congress had intended to create a more than 53,000 acre monument, it would have enacted the Colorado Outdoor Recreation and Economy Act, which proposes to do just that.
However, this legislation has not passed both chambers of Congress nor become law.21 Instead, the Biden administration circumvented Congress and abused its limited Antiquities Act authority.

As the Republican Leaders for the committees of jurisdiction overseeing the Forest Service, we assure you we will exercise our robust investigative and legislative powers to not only forcefully reassert our Article I responsibilities, but to ensure the Biden administration does not continue to exceed Congressional authorizations. Accordingly, to assist in this effort, please answer the following no later than November 17, 2022:

1. As it relates to the Forest Service, please provide the following:

   a. A list of all pending rulemakings and the specific Congressional authority for each rulemaking.
   b. A list of all expected rulemakings and the specific Congressional authority for each rulemaking.

1 WV v. EPA, 597 U.S. __ (2022).

2 U.S. Const. art. I, § 1.
3 Federal Register, Executive Orders (accessed Aug. 2022), available at https://www.federalregister.gov/presidential-documents/executive-orders
4 Deep Dive, How Biden Has Made Policy With Short-Term, Costly Rules: Charts, Bloomberg Law (May 2022), available at https://news.bloomberglaw.com/environment-and-energy/how-biden-has-made-policy-with-short-term-costly-rules-charts
5 West Virginia, 597 U.S. at 5-6.
6 Id. at 4 (citing FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 129, 159-160).
7 West Virginia, 597 at 4.
8 Id. at 5.
9 Id. at 5.
10 Alabama Assn. of Relators v. Department of Health and Human Servs, 594 U.S. __ (2021).
11 National Federation of Independent Business v. Occupational Safety and Health Administration, 595 U.S. __ (2022).
12 West Virginia, 597 at 56 (Gorsuch, J., concurring).
13 Fletcher v. Peck, 6 Cranch 87, 136 (1810).
14 U.S. DEP'T OF AGRICULTURE, U.S. FOREST SERVICE, Resolution Copper Update, https://www.fs.usda.gov/detail/r3/home/?cid=FSEPRD858166 (last visited Oct. 6, 2022).
15 Id.
16 Letter from Gina Owens, Regional Forester, Eastern Region Regional Office, U.S. Forest Service, U.S. Dep't of Agriculture, to Nada Culver, Acting Dir., Bureau of Land Mgmt., U.S. Dep't of the Interior (Sept. 28, 2021), available at https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd969419.pdf.
17 Id.
18 See Exec. Order 14072, 87 Fed. Reg. 81 (Apr. 22, 2022).
19 16 U.S.C. 431-433; Press Release, U.S. DEP'T OF AGRICULTURE, President Biden Designates Camp Hale-Continental Divide Nat'l Monument, (Oct. 12, 2022), https://www.usda.gov/media/press-releases/2022/10/12/president-biden-designates-camp-hale-continental-divide-national.
20 See 54 U.S.C. § 320301.
21 See S. 173 (117th Cong., 2021).

1103 Hydro: OK Energy Today: Xcel cancels hydropower project in western Colorado

1103 Renewables: OPE ED from EJ Staffer at Center for Biological Diversity: As Memphis Light, Gas and Water weighs an exit, is TVA headed for a renewable energy sea change (or not) ?

1103 Akin Gump: Akin Gump Hosts "2022 Midterm Elections: Critical Political and Policy Impacts for the Energy Sector" Webinar Click here to watch the video We are pleased to share a recording of our "2022 Midterm Elections: Critical Political and Policy Impacts for the Energy Sector" webinar that recently took place, along with the presentation materials.

1103 Morgan, Lewis &Bockius LLP: Draft DOE National Clean Hydrogen Strategy and Roadmap Details Opportunities in Hydrogen Sector View original Hydrogen will play a key role in addressing the climate crisis, supporting a transition to net zero, and achieving a sustainable clean energy future. As a versatile energy carrier and chemical feedstock, hydrogen offers many advantages and an ability to leverage renewables, nuclear, and fossil fuels with carbon capture and storage. It can also be used as a fuel or feedstock for applications that do not have competitive and efficient clean alternatives.

In September 2022, the US Department of Energy (DOE) released a draft report providing an overview of hydrogen production, transport, storage, and use in the United States and the opportunities for clean hydrogen to help decarbonize and reduce emissions. Under the Bipartisan Infrastructure Law, DOE was required to develop and release a technologically and economically feasible national clean hydrogen strategy and roadmap to facilitate widescale production, processing, delivery, storage, and use of clean hydrogen. DOE is required to update this strategy and roadmap every three years.

The draft report identifies several opportunities for clean hydrogen to support the transition to net zero. Sectors that are more difficult to decarbonize with traditional approaches are expected to be priority markets for clean hydrogen. These sectors include steel and chemicals manufacturing, heavy-duty transportation, and production of liquid fuels for marine and aviation applications. The development and increasing use of fuel cell forklifts have paved the way for fuel cells in the trucking sector, particularly for fleets with heavy-duty vehicles, long distance (>500 mile) routes, and multi-shift operations that require rapid refueling, as well as for buses.

Hydrogen is also expected to be an essential feedstock for producing liquid fuels for the aviation, rail, and marine sectors and for producing biofuels from biomass (e.g., sustainable aviation fuels). In addition, hydrogen is expected to play a key role in decarbonizing the steel and chemical markets. However, challenges including the lack of hydrogen infrastructure and manufacturing at scale, cost, durability, reliability, and availability will need to be addressed.

The draft report identifies the following key strategies that DOE will implement to ensure that clean hydrogen is developed as an effective decarbonization tool and achieves maximum benefits for the United States:

1. Target strategic, high-impact uses for clean hydrogen to ensure that clean hydrogen will be used in the highest value applications and achieve 10 million metric tons per year of clean hydrogen by 2030.
2. Reduce the cost of clean hydrogen and enable $2 per kilogram by electrolysis by 2026 and $1 per kilogram by 2031.
3. Focus on regional networks, including deploying four or more regional hydrogen hubs to enable large clean hydrogen production and end-use in close proximity to each other and ramp up scale.

To support these key strategies, DOE will continue to advance research, development, demonstration, and large-scale deployment (RDD&D) efforts to drive costs toward the Hydrogen Shot target of reducing the cost of clean hydrogen to $1 per kilogram in one decade. It has focused on fostering partnerships across industry, academia, and national laboratories to investigate and advance technologies and innovation. Examples of DOE's consortia and initiatives include the H2NEW consortium on electrolyzer technologies, the M2FCT consortium to advance fuel cells for heavy-duty trucks, the Hydrogen Materials Compatibility Consortium (H-Mat), and other R&D projects and demonstrations funded through previous solicitations.

The near-term action items that DOE seeks to achieve by 2025 include:

- Laying the regulatory groundwork for large-scale clean hydrogen deployments across production, processing, delivery, storage, and end-use
- Developing streamlined guidance on hydrogen pipeline and large-scale project permitting with stakeholder engagement and addressing environmental, energy, and equity priorities
- Assessing compatibility of pipeline and component materials with hydrogen and hydrogen blends with natural gas
- Establishing a clean hydrogen standard
- Demonstrating clean hydrogen production technologies from multiple pathways, including pyrolysis, waste, renewables, and nuclear
- Initiating the transition to clean hydrogen for hard-to-decarbonize industrial applications and identify specific locations for potential scale up (e.g., ammonia, refineries, steel)
- Supporting demonstrations and infrastructure in markets, including forklifts and other material-handling equipment, refineries, transit buses, long-haul heavy-duty trucks, heavy machinery in mining, construction, and agriculture, and ammonia production
- Reducing the cost of electrolyzers at scale through RDD&D on manufacturing, stacks, and Balance of Plant components and the cost of thermal conversion technologies through RDD&D on modular designs and process intensification
- Developing technologies for high throughput dispensing of hydrogen for heavy-duty vehicles
- Advancing efficient end-use technologies (fuel cells/other power conversion with low/zero emissions) and down-selecting for scale up

DOE stated that its funding has already resulted in more than 1,100 hydrogen and fuel cell patents, 30 commercial technologies, and more than 65 technologies that could be commercial in the next several years. With respect to currently available funding, the Bipartisan Infrastructure Law allocated $8 billion for the development of regional clean hydrogen hubs, which we discussed in a prior blog post, and $1 billion for the Clean Hydrogen Electrolysis Program, which will improve the efficiency and cost-effectiveness of electrolysis technologies by supporting research, development, and demonstration to commercialization and deployment to enable $2 per kilogram clean hydrogen from electrolysis by 2026.

It also allocated $500 million for clean hydrogen manufacturing and recycling RDD&D activities to support manufacturing of clean hydrogen equipment. These funding opportunities will continue to spur investments in clean hydrogen production, storage, transportation, and end uses.

DOE is soliciting comments on the draft report, which are due by December 1, 2022.

1103 **NERC RELEASES 'Technical Reference Document: Beyond Positive Sequence RMS Simulations for High DER Penetration Conditions'** online here: https://www.nerc.com/comm/RSTC_Reliability_Guidelines/Beyond_Positive_Sequence_Technical_Report.pdf which is intended to help Transmission Planners (TPs) and other relevant engineers understand the benefits and limitations of current and beyond positive sequence frameworks with respect to analyzing the impact of DERs on the BPS and the response of distributed energy resources (DER) to BPS events in high DER penetration scenarios

1103 DER - DEI: NERC publishes Distributed Energy Resource Strategy document Distributed energy resource (DER) levels are growing rapidly across many areas of North America and are altering how the bulk power system is planned, designed, and operated. While DERs present a number of benefits, they also create challenges to grid reliability, resilience, and flexibility. The Distributed Energy Resource Strategy https://www.nerc.com/comm/RSTC/Documents/NERC_DER%20Strategy_2022.pdf identifies current and future strategic actions necessary to ensure reliable operation of the bulk power system. The core tenets of the current DER risk mitigation strategy focu s on: DER modeling capabilities, studies incorporating DERs, operational impacts of DERs, and regulatory considerations related to DERs. The ERO Enterprise is dedicated to proactively identifying and addressing bulk power system reliability impacts associated with increasing DER levels and will continue to work collaboratively with industry stakeholders to drive risk mitigation activities. | Quick Reference Guide: Distributed Energy Resource Activities https://www.nerc.com/pa/Documents/DER_Quick%20Reference%20Guide.pdf

1103 Energy Policy: Drawing down SPR - U.S. DoE: DOE Announces Final Contract Awards From President Biden's Emergency Release From the Strategic Petroleum Reserve

1103 Natural Gas Prices: NGI: Mere Tease of Winter's Arrival Sends Natural Gas Forwards Prices Soaring

1103 Transmission: FERC rejects Alliant-led coalition bid to cut ITC Midwest equity ratio, reduce transmission costs

1103 Nuclear: Deep geological disposal inches closer to reality Countries such as Switzerland, Sweden and Finland are leading the charge to develop permanent nuclear waste repositories and have made significant progress in overcoming technical and licensing barriers to deep geological disposal. There's much left to do before actual disposal can start, but recent developments, combined with the emergence of innovative disposal technologies such as the one proposed by US-based Deep Isolation, offer hope that a safe and viable permanent solution for nuclear waste is within reach. Nuclear Engineering International

1103 Clean Energy & IRA: The Energy Infrastructure Reinvestment Program, or Section 1706 program, created by the Inflation Reduction Act, authorizes the Loan Programs Office to direct up to $250 billion in loans to projects that aim to retire or retrofit coal-burning power plants and other polluting assets. This piece explores the Section 1706 program and how it could help clean up existing energy infrastructure. Canary Media

1103 Willkie Farr & Gallagher LLP: Recent FERC Decisions Have Widespread Regulatory Implications for Public Utilities and Investors The Federal Energy Regulatory Commission ("FERC" or the "Commission") recently issued two orders1 expanding the scope of transactions involving public utilities and public utility holding companies that will require notification to FERC or FERC approval. In its October 20, 2022 Open Meeting, FERC issued decisions in Evergy and TransAlta finding that when an investor appoints non-independent directors to the board of a public utility or public utility holding company, the investor is deemed to have "control" of the public utility or public utility holding company even when the investor's interest in voting securities is under 10 percent. As a result, the Commission will treat the investor as an affiliate of the public utility or public utility holding company.

The Commission's findings in the Evergy and TransAlta orders, described in further detail below, will have widespread regulatory implications not only regarding the need to notify FERC or seek FERC approval for a broader set of transactions, but also for public utilities' market-based rate authority ("MBRA") filings, which must now disclose investors meeting the criteria set forth in the orders.

1 See Evergy Kans. Central, Inc., 181 FERC 61,044 (2022) (hereinafter Evergy) and TransAlta Energy Mktg. (U.S.), Inc., 181 FERC 61,055 (2022) (hereinafter TransAlta).

Evergy Order

In Evergy, the Commission found that if an investor appoints non-independent directors, such as an investor's own officer, director, or similar appointee accountable to the investor, to the board of a public utility or public utility holding company, then the investor will be treated as an "affiliate" of that public utility or public utility holding company.2

In Evergy, Evergy Kansas Central, Inc., Evergy Missouri West, Inc., and Evergy Metro, Inc. ("Evergy Sellers"), each directly and wholly owned by Evergy, Inc. ("Evergy"), had filed a notice of change in status to the Commission explaining that The Vanguard Group, Inc. and its affiliates were the beneficial owners of over 12 percent of the publicly traded securities in Evergy. In response, Public Citizen, Inc. ("Public Citizen") and the Communication Workers of America intervened, arguing that Evergy Sellers had failed to notify the Commission of two other investors that had obtained control over Evergy: (1) the Elliot Management Corp. ("Elliot") and its affiliates, and (2) Bluescape Energy Partners, LLC ("Bluescape").3 Public Citizen claimed that Elliot and Bluescape were upstream owners of Evergy Sellers that exert control over Evergy as activist hedge funds through the appointment of preferred board members, despite owning less than 10 percent of Evergy's shares.4

In response to data requests from the Commission, Evergy explained that in February 2020 it had entered into a nonpublic agreement with certain of Elliot's wholly owned affiliates that allowed Elliot to install two of its preferred board members on Evergy's board of directors.5 Additionally, in February 2021 Evergy and Bluescape entered into an agreement wherein Bluescape purchased Evergy stock and allowed Bluescape to install two of its preferred board members to Evergy's board of directors.6 Notably, one of the board members appointed to Evergy's board of directors was on Bluescape's own board as Executive Chairman.7

Evergy Sellers argued that neither Elliot nor Bluescape should be considered an affiliate of Evergy because both owned less than 10 percent of Evergy's stock, with Elliot owning only 4.597 percent and Bluescape owning only 1.1 percent. Accordingly, Evergy Sellers argued they could rely on the rebuttable presumption set forth in section 35.36(a)(9)(v) of the Commission's regulations, which states that "owning, controlling or holding with the power to vote, less than 10 percent of the outstanding voting securities of a specified company creates a rebuttable presumption of lack of control."8 Evergy Sellers also cited to Public Citizen, Inc. v. CenterPoint Energy, Inc. for support, wherein the Commission had found this presumption was not rebutted despite the existence of an agreement to appoint two new directors to CenterPoint Energy's board of directors at the direction of its investor.9

2 See Evergy at P 45. 3 See id. at PP 9, 18. 4 Id. at P 18. 5 See id. at P 25. 6 See id. at PP 20, 26. 7 Id. at P 20. 8 Id. at P 31 (citing 18 C.F.R. 35.36(a)(9)(v) (2021)).

In Evergy, the Commission determined that while Elliot was not an affiliate of Evergy and Evergy Sellers, Bluescape was "individually an affiliate of Evergy and Evergy Sellers under section 35.36(a)(9)(v)" of the Commission's regulations.10 The Commission explained that

Elliot should not be considered an affiliate because it owns less than 10 percent of Evergy's outstanding voting securities, and its investment in and agreement with Evergy to appoint members to Evergy's board of directors is substantially similar to the investment in CenterPoint. Here, as in CenterPoint, the Commission concluded that there was not enough evidence to overcome the presumption of lack of control under section 35.36(a)(9)(v).11

However, the Commission concluded that Bluescape was in fact an affiliate of Evergy and Evergy Sellers. Though in many respects Bluescape's arrangement with Evergy was similar to Elliot's, it differed in one notable way: Evergy had appointed one of Bluescape's own directors, its Executive Chairman, to the Evergy board of directors.12

The Commission explained that board membership confers certain rights, privileges, and access to nonpublic information, and where an investor's own officer, director, or appointee is a member of the board, "the investor itself will have those rights, privileges, and access, and thus the authority to influence significant decisions involving the public utility or public utility holding company."13 Accordingly, the Commission found that:

> where an investor's non-independent director, such as its own officer or director, or other appointee accountable to the investor, is appointed to the board of a public utility or public utility holding company, that appointment functions to rebut the presumption of lack of control under section 35.36(a)(9)(v). We will therefore treat that investor as an affiliate of the public utility or public utility holding company to which a non-independent director has been appointed.14

The Commission determined that as a result of the appointment of a non-independent director--the Executive Chairman of Bluescape--to Evergy's board, Bluescape was an affiliate of Evergy and Evergy Sellers.15

9 Id. (citing 174 FERC 61,101 (2021)). 10 Id. at P 40. 11 Id. at P 42. 12 Id. at P 44. 13 Id. at P 45. 14 Id. (emphasis added). 15 Id.

The Commission directed Evergy Sellers to submit additional information in order for the Commission to process the notice of change in status. Moreover, Evergy Sellers must: amend any pending MBR filings that do not include the required applicable affiliate, update their asset appendix to include all of Bluescape's energy affiliates and their associated assets, update their horizontal and vertical market power analysis with their affiliates' generation and transmission assets, and update relevant information in the relational database.16

TransAlta Order

In a second order issued by the Commission at its Open Meeting on October 20, 2022, the Commission authorized Applicants' request for a change in control resulting from a transaction between TransAlta Corporation ("TransAlta") and Brookfield BRP Holdings ("Investor").17 However, as explained in further detail below, the Commission noted that the request for approval was late-filed, and should have been sought earlier as a result of, among other factors, a change in control occurring due to the placement of non-independent directors on TransAlta's board.18

The proposed transaction at issue in TransAlta involved an agreement executed in 2019 wherein Investor (an affiliate of Brookfield Asset Management or "BAM") purchased debt securities in TransAlta with an option to convert into an equity interest in certain of TransAlta's hydroelectric assets. Further, as part of the agreement, Investor nominated two directors to TransAlta's board of directors. As part of the purchase agreement, TransAlta and Investor executed a related "Standstill Agreement" that prohibited Investor and its affiliates (including Shareholders) from exercising certain activities (e.g., effecting any restructurings or material dispositions of assets) for a period of approximately three years, ending around May 2022. The Standstill Agreement also limited the voting rights associated with the shares in TransAlta owned by Investor and its affiliates, such that they would have no real discretion to vote any common shares.19

In March of 2020, the Shareholders increased their aggregate holdings to 10.1 percent of the common shares of TransAlta.20 Applicants did not seek authorization for a change in control in March 2020, despite owning more than 10 percent of common shares. Applicants argued that the acquisition by Shareholders of more than 10 percent of TransAlta's common shares in March 2020 did not result in a change in control, and so did not require Commission approval, because the restrictions in the Standstill Agreement ensured that Shareholders and other BAM affiliates could not exercise control.21 However, in the instant proceeding, Applicants now sought authorization from the Commission for a change in control, explaining in their application that the upcoming termination of the Standstill Agreement would result in a change in control over the TransAlta Companies if Shareholders, and other BAM affiliates, owned 10 percent or more of the common shares (as they do at present).22

16 Id. at P 48. 17 TransAlta at P 1. Applicants ("Applicants") included: (1) TransAlta Energy Marketing (U.S.) Inc., TransAlta Energy Marketing Corp., TransAlta Centralia Generation LLC, TransAlta Wyoming Wind LLC, Lakeswind Power Partners, LLC, and Big Level Wind LLC (the "TransAlta Companies"), which are all wholly owned subsidiaries of TransAlta; and (2) Eagle Canada Common Holdings LP and BIF IV Eagle NR Carry LP ("Shareholders"), which were formed to own common shares of TransAlta, and for which the voting interests are held by investment vehicles managed and controlled by a general partner that is a wholly owned indirect subsidiary of Brookfield Asset Management Inc. Id. at PP 3, 12. 18 See id. at P 29. 19 See id. at PP 18, 19. 20 Id. at P 20.

The Commission disagreed, finding that under both sections 203(a)(1)(A) and 203(a)(2) of the Federal Power Act ("FPA") prior approval had been required for the March 2020 acquisition by Shareholders of an aggregate 10.1 percent of TransAlta's common shares.23 To support their argument that the initial March 2020 investment did not result in a change in control, Applicants cited to Cascade Investment, L.L.C., where the Commission found that a proposed transaction that included a standstill agreement similar to the Standstill Agreement here did not result in the purchaser's ability to assert control over the public utility despite the purchaser holding more than 10 percent of outstanding voting securities.24 However, in TransAlta, the Commission distinguished Cascade in three important ways:

First, the application in Cascade was filed prior to the purchaser (Cascade) obtaining more than 10 percent of the voting securities in the public utility holding company (Otter Tail Corporation).25

Second, unlike in Cascade, here Investor and its affiliates had an agreement with TransAlta to nominate two directors to TransAlta's board and, subsequently, placed two executives from BAM affiliates on the board of directors. The Commission cited to Evergy, noting that directors appointed by an investor have the ability to influence significant decisions involving a public utility or public utility holding company. Accordingly, "the appointment of two board members that are not independent from Investor and its affiliates to TransAlta's Board of Directors does constitute a change of control."26 The Commission concluded that, "[g]oing forward, appointment of an investor's own officers or directors, or other appointee accountable to the investor, to the board of a public utility or holding company that owns public utilities will require prior Commission approval under [FPA] section 203(a)(1)(A)."27

Third, unlike the standstill agreement in Cascade, the Standstill Agreement here does not contain explicit prohibitions on Shareholders' ability to influence day-to-day activities of TransAlta.28

21 Id. at P 23. 22 Id. at P 20. 23 Id. at P 24. 24 Id. at P 26 (citing 129 FERC 61,011 (2009)). 25 Id. at P 27. 26 Id at PP 2829. 27 Id. at P 29 (emphasis added). 28 Id. at P 30.

The Commission concluded that the Standstill Agreement was not sufficient to prevent a change in control as a result of the Shareholder's purchase of over 10 percent of TransAlta's common shares in March 2020. However, though Applicants failed to file a timely request for the disposition of a public utility and acquisition of securities, the Commission did not take any further action and instead evaluated the proposed transaction on a prospective basis, ultimately approving the proposed transaction.29

Implications of the Evergy and TransAlta Orders

The Commission's decisions in Evergy and TransAlta have significant implications for investors, public utilities, and public utility holding companies going forward.30 The concept of control is relevant under both sections 203 and 205 of the FPA. Section 203 applies to mergers and acquisitions. Section 205 governs wholesale rates and MBRA.

First, under section 203, parties contemplating arrangements similar to those described in Evergy and TransAlta, wherein non-independent directors will be appointed by an investor to the board of a public utility or public utility holding company, must now seek prior Commission approval if the transaction is in excess of $10,000,000, even if the investor will ultimately acquire less than 10 percent of the outstanding voting securities. Bluescape, for example, acquired only 1.1 percent of Evergy's stock.

Second, under section 205, public utilities must treat these investors as affiliates, which will complicate a public utility's MBRA filings. The public utility may have to make a number of related filings, including (1) a change in status filing, (2) update its asset appendix to include the investor's affiliates and their associated assets, (3) update its horizontal and vertical market power analysis with the affiliates' generation and transmission assets, and inputs to electric power production, and (4) identify their upstream owners, update the Ultimate Upstream Affiliate information in the relational database, and include the updated asset appendix serial number in the transmittal letter.31 Moreover, to the extent the investor itself has MBRA, because the public utility is now deemed to be an affiliate, it may have its own obligations to make MBRA-related filings.

As a practical matter, one consequence of Evergy and TransAlta may be that investors acquiring less than 10 percent of the voting securities should be circumspect about seeking the right to appoint non-independent board members. Appointing independent board members may suffice, without risking additional regulatory burdens. In addition, although the Commission noted that its holdings were prospective in nature,32 the question is what happens under section 205 for entities with MBRA that have investors who appointed non-independent board members. Under Evergy, it appears that such entities will need to begin learning more about their investors and making the appropriate MBRA filings.

29 Id. at P 33. 30 Notably, the Commission clarified that its finding in the orders are prospective. See id. at P 29 & n.36. 31 Evergy at P 48. 32 TransAlta at P 29 & n.36.

Finally, Evergy and TransAlta are notable because they are the latest orders to signal Commission concern over when control arises under sections 203 and 205 of the FPA and when an investor should be deemed to be an affiliate of a public utility. A unanimous Commission issued both orders. Investors should expect to see more activity in this space, and there will likely be further Commission scrutiny, as the Commission parses a variety of fact patterns to determine whether an investor gained a controlling interest in an entity. The concept of control is important in other regulatory contexts, and it will be interesting to see whether any other agency follows the Commission's approach.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work. Norman C. Bay 202 303 1155 nbay@willkie.com Alexandra K. Calabro 202 303 1456 acalabro@willkie.com

1103 Nuclear: Governments can stimulate private investment in new nuclear projects with modern regulations and innovative financing mechanisms such as long-term contracts, cost-share agreements and price guarantees, (really?… I'm just stunned…who would have guessed…) writes Troy Edwards, a partner at Allen & Overy. The simplified designs and reduced capital requirements of Generation IV reactors may lower the investment bar and help drive widespread adoption, but the technology is still nascent, Edwards writes. Allen & Overy LLP

1103 Hydro: Energy Central: Senate Energy & Natural Resources Committee Issues Report on a bill (S. 3450) to authorize DOI to construct and operate Sun River Hydropower Project in Montana

1103 Manchin Deal: Salon OpED: Transmission impossible: Are Democrats punting on permitting reform? [this is a reprint of an article cited below)

1103 K&L Gates: Heightened Scrutiny of Director Positions and potentially interlocking directorates by FERC and DOJ The Federal Energy Regulatory Commission and the Department of Justice recently issued orders and statements demonstrating concerns related to director positions and potentially interlocking directorates. These actions together signal greater attention paid to the identities and affiliations of directors serving on corporate boards. Going forward, companies should carefully review the composition of their (and their upstream owners') board of directors to confirm they are in compliance with FERC and DOJ regulatory requirements. More - https://www.klgates.com/Heightened-Scrutiny-of-Director-Positions-by-FERC-and-DOJ-11-3-2022

1103 Transmission/Wind: NA Windpower: Coalition Supports New England Offshore Wind Transmission Grid Plan New England for Offshore Wind has filed comments in response to a request for information issued by five New England states seeking information concerning the development of a networked offshore electric grid to help unlock offshore wind power.

1103 Allen Matkins LLC: Renewable Energy Update - November 2022

[] US Rresidential solar market in growth mode, although market changes lie ahead 1027 The U.S. residential solar market saw its fifth consecutive record for both customer additions and quarterly installations in Q2 of 2022 as high energy prices and inflationary pressures caused demand to spike. The residential loan market continued to dominate but longer-term the market can expect some changes following the passage of the $369 billion Inflation Reduction Act. The loan segment of the U.S. residential solar market is set to grow 37% year-on-year in 2022, which will push its record market share levels to 68%, according to a recent analysis from Wood Mackenzie. https://www.pv-tech.org/us-residential-solar-market-in-growth-mode-although-market-changes-lie-ahead/?

[] **San Jose invests in solar power to reach climate goals SFGate – October 29** plans to spend hundreds of millions of dollars over the next two decades to meet its carbon neutral goals, including utilizing solar power. City council approved four contracts worth an estimated $530 million to build out the city's battery storage to access and store more solar energy. It's the start of a significant series of renewable energy contracts coming before councilmembers in the next few months. https://www.sfgate.com/news/bayarea/article/San-Jose-Spotlight-San-Jose-Invests-In-Solar-17543621.php?

[] **Utah's largest solar project comes to coal country Salt Lake Tribune – October 27** Utah company has announced an agreement with PacifiCorp to build the state's largest solar farm and battery storage facility in the heart of Utah's coal country. rPlus Energies and Rocky Mountain Power parent PacifiCorp signed an agreement for PacifiCorp to purchase the power generated by a 400 MW solar farm and associated 200 MW battery storage facility. https://www.sltrib.com/renewable-energy/2022/10/27/utahs-largest-solar-battery/?

[] **Sempra, Silicon Valley Power sign PPA with Santa Clara for Cimarrón wind farm North American Windpower – October 27** Sempra Infrastructure and Silicon Valley Power have entered into a 20-year power purchase agreement for the long-term supply of renewable energy to the City of Santa Clara from the proposed Cimarrón wind project, Sempra Infrastructure's cross-border 300 MW wind generation facility under development in Baja California, Mexico. https://nawindpower.com/sempra-silicon-valley-power-sign-ppa-with-santa-clara-for-cimarron-wind-farm?

[] **Visalia sparks plans for a new battery energy storage facility The Sun Gazette – October 28** Tulare County is looking to expand renewable energy options in Visalia. The Tulare County Planning Commission approved a special use permit for 4 Creeks ESS, LLC to allow a lithium-ion battery energy storage facility east of Visalia at their October 26 meeting. The storage facility is capable of delivering 500 MW of energy for up to 12 hours.

[] **L.A. battery storage projects add grid capacity, reliability to region Environment + Energy Leader – October 31** A battery storage project that will help increase grid resilience and further state and federal energy targets is being planned for the Los Angeles area. The project will be a part of an acquisition by GridStor of multiple battery storage developments already underway. The developments have a capacity of 500 MW and 2 GWh, and the battery storage sites are being built in urban locations near existing power lines and substations, which will allow the batteries to be quickly connected to the electric grid. https://www.environmentalleader.com/2022/10/la-battery-storage-projects-add-grid-capacity-reliability-in-energy-hungry-region/?

[] **Salt River Project to add two utility-scale battery projects Power Engineering – October 31** Arizona-based municipal utility Salt River Project signed contracts with Plus Power to bring online two battery storage systems with a total combined output of 340 MW by early summer 2024. The first project, called Sierra Estrella, will be a 250 MW/1 GWh storage system located in Avondale. The second, Superstition, will be a 90 MW/360 MWh system located in Gilbert. Both would be owned and operated by a subsidiary of Plus Power. https://www.power-eng.com/energy-storage/salt-river-project-to-add-two-utility-scale-battery-projects/?

[] The Federal Energy Regulatory Commission (FERC) on Tuesday accepted Xcel Energy's application for a preliminary permit to study a pumped-storage hydropower project in Unaweep Canyon, Colorado. The preliminary permit is the first step in a years-long process of scoping and planning that will include many public meetings with residents of the canyon, several of whom will lose their homes and properties if the project is developed. https://coloradosun.com/2022/11/01/xcel-unaweep-canyon-pumped-storage-hydro-ferc/?

1103 Energy Policy: Shipping data from Kpler show that Asian refiners are on track to import a record 1.8 million barrels per day of US crude oil this month, lured by West Texas Intermediate's widening discount to Brent. US oil exports to South Korea are expected to hit a record 619,000 bpd, while China is seen taking at least 450,000 bpd, the most since December 2020, according to Refinitiv. Reuters

1103 Energy Policy: A Rystad Energy analysis found that the American Petroleum Institute's proposed 10-point energy policy plan could generate more than 225,000 jobs by 2035, drive nearly $200 billion in investments, boost oil and natural gas production and increase federal revenues from oil and gas development by $4.8 billion. "Pennsylvania Business Report

1103 Nuclear: The Nuclear Regulatory Commission has made publicly available an unclassified version of its annual report to Congress detailing the prior year's security inspection program. The report is required under the Energy Policy Act of 2005. It covers the NRC's security inspection program, including force-on-force exercises for commercial nuclear power reactors and Category I fuel cycle facilities for calendar year 2021. It provides information regarding the overall security and safeguards performance of the commercial nuclear power industry and Category I fuel cycle facilities to keep Congress and the public informed of the NRC's efforts to oversee the protection of the nation's civilian nuclear power infrastructure and strategic special nuclear material. In 2021, during the COVID-19 pandemic, the NRC conducted 176 security inspections at commercial nuclear power plants and Category I fuel cycle facilities. These inspections included 18 full triennial force-on-force inspections at nuclear power plants, involving simulated attacks on the facilities to test the effectiveness of a licensee's physical protection program, and one triennial force-on-force inspection conducted at a Category I fuel cycle facility The NRC's security inspection program and publicly available results are discussed in the report. Whenever NRC inspectors identify a security finding during an inspection, they ensure the licensee implements appropriate compensatory measures to correct the situation, if not already implemented by the licensee. Details of security findings are considered sensitive and not released to the public.

1103 IRA - reasury and IRS released three more requests for comment BY DEC 3 on the clean-energy provisions in IRA seeking stakeholder feedback on tax credit provisions concerning [1] commercial clean vehicles and alternative fuel vehicle refueling property, [2] carbon capture, and [3] clean hydrogen and clean fuel production.

1103 Trends: The Hill: Winter is coming, prices are rising, and most voters say: Unleash American energy now

1103 Supply: NYS PSC: Utilities Should Be Able to Meet Fuel Demand During Winter

1103 EV - PG&E launches 3 year pilot dynamic export rate for commercial electric fleets to help meet peak demand – estimated cost to rate payers/increase energy costs - $1.52 million. Utility Dive: https://www.utilitydive.com/news/pge-launches-dynamic-export-rate-for-commercial-electric-vehicle-fleets/635622/

1103 Bill Restructuring: Connecticut (PURA) regulators fine Avangrid's gas, electric utilities $4.5M over COVID-19 payment program for use of wage garnishments/bill collections not permitted under the rules.

1103 Solar EV: Inside the world's first affordable solar-powered electric vehicle debuting in Europe next year - The $25,000 Sono Motors Sion It features 465 integrated solar half-cells throughout the exterior of the car — roof, doors, fenders (safe drivers only) , hood and all. The company estimates that solar power alone can fuel about 70 miles of driving per week. For longer trips though, the Sion has a lithium iron phosphate battery with a 190-mile range, made by Chinese electric vehicle and battery giant BYD.

1103 Permitting Reform: E&E - Manchin is working to get his stymied permitting reform into the 2023 National Defense Authorization Act, according to comments the West Virginia Democratic senator made Wednesday. I've tried to put it in the continuing resolution, and I'm working now on getting it in the National Defense Authorization," Manchin said at Stanford University's Global Energy Forum. D and R Lawmakers said they would be more willing to negotiate a permitting reform deal with more time for haggling and without the threat of a government shutdown. Progressives lined up against the legislation to streamline environmental reviews, accusing Manchin of wanting to facilitate the use of fossil fuels at the expense of environmental justice. R's felt the package didn't go far enough to eliminate regulatory burdens…Lawmakers consider the NDAA and upcoming end-of-year omnibus spending legislation as the two most realistic options.

1103 Hydrogen: The war in Ukraine and the energy crisis in Europe have governments looking in all directions for alternative energy sources and a big winner appears to be green hydrogen. Bringing green hydrogen to scale will require a huge investment, but about $73 billion has been committed to the energy source worldwide since the start of the Ukraine war, says Kofi Mbuk of Carbon Tracker. Tax credits in the Inflation Reduction Act will also help drive down the cost of green hydrogen and "investors could generate very healthy returns and rapidly scale up production in the US market," said Mbuk. Financial Times (subscription required)

1103 Clean Energy: Ttax credits in the Inflation Reduction Act will help incentivize new clean energy projects, but there's still a lot of dirty infrastructure on the grid that needs to be dealt with. The solution is the Energy Infrastructure Reinvestment Program, or Section 1706 program, which authorized the Loan Programs Office to direct up to $250 billion in loans to projects that aim to retire or retrofit coal-burning power plants and other polluting assets. This piece explores the Section 1706 program and how it could help clean up existing energy infrastructure. Canary Media

1103 Net Metering: Idaho **Public Utilities Commission** to hold hearings this week on net metering

1103 Decommissioning: Sens. Markey (D-MA), Warren (D-MA), along with Rep. Keating (D-MA) Wednesday urged Holtec Decommissioning International to publicly commit to follow EPA regulations and not discharge any effluent water from the shuttered Pilgrim Nuclear Power Station into Cape Cod Bay.

1103 Energy Policy: Marshall McCrea, co-CEO officer of Energy Transfer, one of North America's

biggest pipeline operators, slammed Administration energy policy, likening its criticism of fossil-fuel companies to "a sitcom or Saturday Night Live skit."

1103 Energy Policy: 16 high-level Biden administration officials will represent the US at the UN climate conference beginning in Egypt Sunday.

1103 Energy Policy: Meredith Cross, Obama era Director of the SEC's Division of Corporation Finance said Wednesday SEC's climate disclosure plan would bring "outrageously" complicated, *expensive* and hard rules for companies to follow.

1102 Transmission: "Study**" by environmental groups says** push for 100% clean power by 2050 in the Midwest requires scaling up interstate electric transmission capacity to meet demand,."study" back federal efforts to streamline the permitting and planning of major power grid upgrades necessary to connect more renewable energy.

1102 Clean Energy: Supply chain issues, struggles to procure solar panels and growing interconnection queues contributed to a 22% overall decline in clean energy deployment in the US during the third quarter. According to a **report** from the American Clean Power Association, onshore wind installations fell 78%, while solar dropped 23%. One bright spot was battery storage installations, which climbed 227%. **American Clean Power Association**

1102 Nuclear: DOE records show that the Waste Isolation Pilot Plant nuclear waste repository in New Mexico missed fiscal 2022 waste shipment goals for the largest active shippers: Idaho National Laboratory, Los Alamos National Laboratory and the Savannah River Site. Donavan Mager, spokesperson for WIPP contractor Nuclear Waste Partnership, said the pandemic and other incidents slowed disposal operations and strained resources at both generator sites and WIPP.**:** Carlsbad Current-Argus (N.M.) (tiered subscription model)

1102 Manchin Deal - Transmission: Grist: Transmission impossible: Are Democrats punting on permitting reform? Note author leans left/progressive.…hitching a ride --- "the only two viable candidates are the omnibus spending bill, a big package of appropriations bills, and the National Defense Authorization Act, the NDAA, which funds the military through the 2023 fiscal year. Congress will turn to those…[during] "lame-duck session." But there are risks to attaching permitting reform to one of these other bills, especially the NDAA, Casten said. Manchin will likely work with Republicans to come up with a new permitting reform bill that has their support, and that version of the bill could gut the National Environmental Policy Act, leading to the approval of infrastructure projects without adequate environmental reviews, or include provisions that allow states to drill for oil and gas on federal land within their state borders with less oversight than is currently in place. Such a bill already exists — it was proposed by Republican Senator Shelley Moore Capito, Manchin's fellow senator from West Virginia — but it failed to pass after Democrats blocked it. It'll be much harder for Democrats to nix a new permitting bill if it is attached to the NDAA because voting against military spending is politically unpopular. "If there is a package that the Senate can accept in the NDAA, it will in all likelihood be worse," Casten said. "How many Democrats are going to peel off over permitting and shut down military spending? That's a really politically hard question." There's also a scenario in which Republicans take back one or both houses of Congress next week and permitting reform is revisited under their terms. On Tuesday, Politico reported that House Republicans are planning an energy agenda that centers around much more aggressive permitting reforms that would significantly shorten environmental reviews for all types of energy projects. But they're unlikely to be successful in the next two years [because] they won't have a White House that will sign off on it."

1102 **Hot Air: Texas is running out of pipeline at the worst possible time**

1102 EJ: **ImpactAlpha: Pursuing environmental justice through the Inflation Reduction Act**

1102 Hydro: **Colorado Sun: Xcel Energy ends plan for Unaweep Canyon hydropower project**

1102 Coal: **Dozens of US Coal Plant Closures Delayed as Green Energy Shift Slows** *Will Wade, Bloomberg* As many as 40 US coal-fired power plants that were slated to shut will run for longer than expected, with operators delaying plans to retire them as supply-chain issues and reliability concerns slow the transition to greener energy.

1102 Natural Gas: **California's Natural-Gas Bans Push Largest Gas Utility to Find a New Strategy** *Katherine Blunt, The Wall Street Journal* Southern California Gas will need to spend billions (which will increase rates) to repurpose its system for a future with fewer gas customers. Southern California Gas is considering how to best transition away from natural gas as California moves to prohibit sales of gas furnaces and water heaters beginning in 2030. ***SoCalGas has 21.8 million customers*** but lacks an electricity business and plans to update infrastructure to transport green hydrogen.

1102 Pipelines: **Equitrans wants U.S. legislation to help finish Mountain Valley natgas pipe** *Reuters* U.S. energy company Equitrans Midstream Corp. said on Tuesday that the best path to complete its Mountain Valley natural gas pipeline from West Virginia to Virginia by the second half of 2023 was through U.S. permitting reform legislation.

1102 Energy Policy: **'All for naught.' Biden orphan well plan faces trouble in Pa.** *Heather Richards, E&E News* Even as Pennsylvania prepares to tap millions in federal money to plug roughly 300 of the state's many abandoned oil and gas wells, drillers this year have already tried to walk away from another 354.

1102 Energy Policy: **G-20 Spent Almost $700 Billion Supporting Fossil Fuels Last Year** *Aaron Clark, Bloomberg* The Group of 20 nations spent $693 billion supporting the fossil fuel industry last year, slowing progress towards global climate goals, according to a report released by Bloomberg Philanthropies and BloombergNEF on Tuesday.

1102 Solar: **Google Signs Solar Deal With SB Energy in Push to Cut Emissions** *Angel Adegbesan, Bloomberg* Alphabet Inc.'s Google signed its largest solar deal from a single developer, agreeing to buy 942 megawatts from SB Energy Global LLC as part of its push to eliminate emissions from its operations.

1102 Wind: **The Great US Offshore Wind-Power Boom Has Begun to Falter** *Josh Saul and Will Wade, Bloomberg* Plans for massive offshore wind farms that President Joe Biden hopes will power as many as 10 million American homes by 2030 are starting to wobble.

1102 Nuclear: **PG&E Formally Asks NRC to Extend Diablo Canyon Power Plant License to 2030 to Boost Grid Reliability :** Nuclear Newswire (American Nuclear Society) KSBY-TV (San Luis Obispo, Calif.)

1102 Heat Pumps: White House Wednesday announced $13 billion in assistance aimed at lowering utility bills, creating union jobs, and meeting climate goals — with a big emphasis on heat pumps as a "solution" to high energy costs, enlisting companies like Airbnb, Lyft, and Procter and Gamble to spur production and installation.

1102 Energy Policy: E&C R's: Everyone Suffers Under Biden's Diesel Crisis

E&C GOP Leading to Reverse This Cost-of-Living Surge

President Biden has waged war on American energy since day one in office. His radical rush-to-green agenda has led to skyrocketing energy prices and our critical energy supplies declining to historic lows.

A **new report** from the Energy Information Administration shows just how much Biden's agenda has drained our energy supplies and weakened our energy security:

U.S. inventories of distillate fuel — used in diesel, jet fuel, and heating oil — are at **the lowest level since 2008**.

The retail price of diesel alone in the U.S. has **risen from a national average of $3.50** per gallon at the beginning of 2022 **to over $5.50 per gallon** in May, and there has been little relief since then.

U.S. distillate inventories have declined considerably in the last year, with some regions experiencing **inventory lows not seen since the 1950s.**

WHAT IT MEANS: Every part of the American economy is hurt as a result of Biden's diesel crisis. It now costs even MORE for truckers to deliver food and everyday items we need. Farmers are paying more to grow food and produce key ingredients. It's making it harder to keep grocery store shelves stocked, which is making it even more expensive to put food on the table for families who are already crushed by 40-year high inflation and grocery costs.

It's hurting families like Sherri's:

The price of fuel that we are experiencing in my company, unfortunately, my customers are experiencing that as well. **It's a pass-on in part to our customers.** We haul anything from water to tires—all sorts of goods on our trucks. And **that cost is going into those goods."**

President Biden's radical climate agenda is contributing directly to the diesel shortage and high prices Americans are now facing. Since day one, his administration has imposed a moratorium on fossil energy production on federal lands, blocked the construction of new pipelines, and proposed punitive regulations on refineries. According to the Wall Street Journal, he has leased fewer acres of federal land for oil and gas drilling than any other president since Harry Truman.

Now, with energy prices at record highs, President Biden is turning to OPEC and Russia, while trying to shift blame onto energy companies and threatening them with higher taxes—which will hurt American workers, further stifle production, and lead to unaffordable energy prices.

Energy and Commerce Republicans are sounding the alarm on Biden's diesel crisis: Go to the **PERMALINK** to see these twitter links….

It's past time to reverse the high costs of President Biden's forced energy transition and flip the switch on American energy production to unleash our refining capacity, build more pipelines, and drill more here in the United States. Energy and Commerce Republicans remain committed to leading on solutions to lower costs, reduce emissions, and strengthen our energy security.

CLICK HERE to read more about E&C Republican solutions that flip the switch on American energy production and lower costs for people across the country.

1102 GHG Regs: Ahead of COP27, some call for climate compensation fund *Kate Abnett, Reuters*

Channelling climate compensation payments through existing funds will not work for vulnerable communities, a team of international researchers said on Tuesday, arguing that a new fund be created.

1102 GHG Regs in Financial Markets: As polls point to R's securing the House in the midterm

elections, GOP lawmakers are setting the stage for investigations into "woke capitalism" that will see the party press Gary Gensler, the Securities and Exchange Commission chairman, and Wall Street firms for answers on their climate mitigation efforts. In an interview, Rep. Garland "Andy" Barr (R-Ky.) called environmental, social and governance investing "a cancer within our capital markets," and said the SEC's proposed rule for climate disclosure regulations would come under particular scrutiny. (**The Washington Post**) & AP - **Political spat over climate risks in investments gets hotter** Steve Karnowski and Stanley Choe. The political fight is only getting fiercer over whether it's financially wise or "woke" folly to impose regulations and additional costs on all companies – necessarily increasing costs and reducing returns - so that investors can consider a company's impact on climate change, workers' rights and other issues when making investments **Companies Face Tougher Net-Zero Validation Requirements** *Frances Schwartzkopff, Bloomberg* Companies face more rigorous requirements from the UN-backed group whose stamp of approval investors increasingly demand (??? – no data cited and there is conflicting data on this issue.) before allocating funds.

1102 Storage: **Puerto Rico's Fragile Grid to Get Boost from Networked Batteries** ***Jim Wyss, Bloomberg*** Sunrun Inc was selected to develop a 17-megawatt electricity generation project in Puerto Rico that harnesses excess battery power from its residential solar customers.

1102 Resiliency & Rates: **Texas plan to stop next grid disaster could cost customers billions** *Jeff St. John, Canary Media* A new report finds that a proposal to improve grid reliability could cost much more than alternatives and still fail to prevent winter blackouts.

1102 Energy Policy: **Will Democratic attacks on Big Oil pay off with voters?** *Nico Portuondo, E&E News* Democrats have launched a last-gasp effort to change the narrative around high gasoline prices ahead of next week's midterm elections, in a move some strategists say could shield candidates from Republican attacks. (Biden's proposal to increase taxes on profits – from an economic perspective makes no sense (aka Eco 101)..that is a clear and very large disincentive (on top of other disincentives from the Biden administration) to invest in more production – Brad.)

1102 LIHEAP: HHS to release $4.5 billion in funding to help families pay their energy bills and make energy-related home repairs through the Low Income Home Energy Assistance Program with funding from the bipartisan infrastructure law and emergency funding requested earlier this year. An additional $9 billion will also be allocated to helping families make energy-efficient upgrades to their homes, such as installing half a million heat pumps. **(CNBC)**

1101 Energy Policy: **Politico: Republicans plan an energy agenda designed to keep Democrats on their heels** "Biden and Democratic lawmakers such as West Virginia Sen. Joe Manchin are still hoping to pass permitting legislation this year that would ease approvals of oil and gas infrastructure along with clean energy sources like wind and solar power. Republicans have panned the Democratic plan as too modest, and their own expected legislative push will center on measures to reduce environmental reviews for all types of energy projects, speed approvals for oil pipelines and natural gas export terminals, as well as mines to produce critical minerals used in electric vehicles and uranium fuel that powers nuclear reactors. Democrats' long-shot end-of-year permitting push and Republicans' appetite for updating those rules when they are likely to take control of the gavels could help the two sides strike a deal in the next Congress, according to one former Republican legislative aide. "The exercise sets the table for compromise for early next year," said Alex Herrgott, president and CEO of the Permitting Institute, a nonprofit, who was a senior staffer for Sen. Jim Inhofe (R-Okla.) and who has been giving technical advice to congressional staffers working on permitting. **Republicans say the Manchin proposal, or any similar compromise that might emerge in the waning months of this year, doesn't go far enough to change the National Environmental Policy Act, the bedrock environmental law first adopted in 1970, which they see as a barrier to building energy infrastructure**. A senior House GOP policy adviser acknowledged that Republicans' permitting legislation — modeled after a broad NEPA overhaul bill introduced in 2020 by Rep. Garret Graves (R-La.) — would be a starting point of negotiations with congressional Democrats and Biden.

1101 Rates - Boston.com: The energy rate increase is here. Here's what to know. November is here, and so are higher utility rates for Massachusetts customers. The Massachusetts Department of Public Utilities has approved suppliers' new gas and electric rates,

1101 Demand Response: St. John's Lutheran Church Enrolls in MISO Demand Response Programs to Reduce Electricity Costs

1101 Natural Gas/New England: Register Citizen: Natural gas shortage this winter could lean to rolling blackouts in CT, Eversource CEO warns & **NBC CT: Eversource, UI Call for Action to Prevent Potential Winter Power Outages** & **Boston Globe: Eversource CEO asks Biden to take emergency action on New England natural gas supply** &**Platts: Eversource asks US President Biden to intervene to avoid New England gas shortage**

1101 Transmission: FERC: Rulemaking - Transcript of the Transmission Planning and Cost Management Technical Conference held October 6, 2022.

1101 Clean Energy: The Hill: US, UAE investing $100B in clean energy projects

1101 Energy Policy: US crude oil and gasoline inventories dropped by 6.53 million barrels and 2.64 million barrels, respectively, last week, while distillate supplies added 865,000 barrels, the American Petroleum Institute reported Tuesday. OilPrice (UK)

1101 Refiners: US refiners Marathon Petroleum, Phillips 66 and Valero Energy saw their profits surge in the third quarter as the industry continued to benefit from healthy margins, high natural gas prices in Europe, strong fuel demand and discounted heavy, sour crude. OPIS Global Head of Energy Analysis predicts refiners could be headed for a record-setting fourth quarter if the strong spot margins seen in October remain the norm. The Wall Street Journal

1101 Solar: Lawrence Berkeley National Laboratory has released the latest edition of its annual report, *Residential Solar-Adopter Income and Demographic Trends*. The report is based on address-level data for 2.8 million residential households across the country that have installed solar onsite. It describes trends in solar-adopter household income levels, race and ethnicity, language preference, rurality, education levels, occupation, age, home value, and location within a "disadvantaged community". The report also describes income differences across system ownership models, installers, system sizes, stand-alone vs. paired solar-plus-storage systems, and systems on multi- vs. single-family buildings. This latest update includes data on systems installed through 2021. The report is accompanied by an online data visualization tool that enables users to further explore the data from the report. The authors will also host a webinar highlighting key findings from this study on November 17th at 10:00 am Pacific / 1:00 pm Eastern. Register for the webinar here: https://lbnl.zoom.us/webinar/register/WN_sDcc_DKnTpyByQBKkKX5VQ

The following are a few select findings from the latest update:

Solar adopters span all income ranges. (but the majority are high income households) Solar adopters include households across all income levels, as shown in Figure 1 on the left. For example, roughly one third of all households that installed solar in 2021 had incomes between $50,000 and $100,000, while 15% of adopters were below that range and roughly half were above that range. So 52% had incomes over over $100,000 and some percentage of the other 1/3rd made up to $100,000....**Solar adopter incomes skew high, compared to the broader population.** As shown in Figure 1 on the right, the median household income for 2021 solar adopters was $110,000, compared to $79,000 for all U.S. owner-occupied households and $63,000 for all U.S. households (including renters). The disparity in these national numbers partly relates to the fact that close to half of residential solar adopters were in California, a relatively high-income state. However, as shown in the report, even at the individual state level, solar-adopter incomes consistently skew high. **Solar adoption has been slowly shifting toward less affluent households over time.** The median household income of 2010 solar adopters is $129k, compared to $110k for 2021 solar adopters, as shown by the Absolute Income line in the left-hand figure below (which is based on current incomes for all solar adopters). The shift toward less affluent households partly reflects a "deepening" of solar markets, as indicated by the Relative Income line, which compares solar-adopter incomes to all households in the same county and shows a steady downward trend. Solar markets are also "broadening" into progressively less affluent states, as shown in the figure on the right-hand side. That latter trend has been driven to a large extent by solar market growth in Texas and Florida, which fall respectively within the sets of Middle- and Low-Income states. **The share of the solar market in disadvantaged communities has been rising over time.** The U.S. Department of Energy has developed a designation for "disadvantaged communities" (DACs) that considers a diverse set of criteria related to energy burden, environmental and climate hazards, socio-economic vulnerabilities, and fossil dependence. Using these designations, Figure 3 shows the that the percentage of residential solar installations in DACs more than doubled from 5% in 2010 to 11% in 2021. Despite that improvement, DACs still remain under-represented relative to their share of the population as a whole (18% of households).

1101 [Jones Day: FERC Signals Increased Scrutiny Over Affiliate Relationships]() The Federal Energy Regulatory Commission ("Commission" or "FERC") holds that appointing an investor representative to a Public Utility Board results in an affiliate relationship independently of the amount of voting stock held by the investor.

On October 20, 2022, the Commission issued two orders that broadened the meaning of public utility "affiliates" for purposes of: (i) the Commission's change in status filing requirement and other affiliate rules and restrictions that apply to sellers with market-based rate authority under section 205 of the Federal Power Act ("FPA"); and (ii) what constitutes "control" for purposes of FPA section 203 governing dispositions of jurisdictional facilities.

In the first case, Evergy, Inc. ("Evergy") conveyed an interest of less than 10 percent to investor Bluescape Energy Partners, LLC ("Bluescape"), and agreed to appoint two Bluescape representatives to its board, including Bluescape's executive chairman. While the Commission's regulations contain a rebuttable presumption that there is no "control"—and therefore no affiliate relationship—where an investor owns less than 10 percent of the utility's voting shares, in *Evergy*, the Commission held that appointing a non-independent director accountable to an investor to a public utility's board "functions to rebut the presumption of lack of control." In such instances, the investor shall be deemed an affiliate of the public utility, and the public utility will now be required to notify the Commission of its change in status.

In the second case, the Commission extended its holding in *Evergy* to apply to section 203 filings. TransAlta Corporation conveyed an interest to investor Brookfield BRP Holdings (Canada) Inc., which was permitted to place executives from affiliate companies on TransAlta's board. Under section 203, a public utility must obtain Commission approval to "dispose of" jurisdictional facilities, but the Commission has held that a transaction that does not transfer "control" does not require such approval. In *TransAlta*, the Commission held that appointing the investor's executives to the TransAlta board constitutes a change in control that requires prior section 203 approval, regardless of the percentage ownership transferred. The Commission warned that applicants must submit required section 203 applications or "face possible sanctions."

At the Commission's October meeting, Chairman Richard Glick signaled increased scrutiny over affiliate relationships, stating, "It's very important from a Commission perspective in terms of protecting consumers." This new approach means that sellers with market-based rate authority and market participants seeking FERC's approval for transactions must be vigilant in analyzing potential affiliate relationships that may arise when investors join public utility boards.

1101 OK Energy Today: Power Pool cost allocating plan okayed by FERC despite opposition by Oklahoma regulators

1101 APPA: FERC Sides with San Francisco in Dispute with Pacific Gas & Electric FERC Order online here: https://www.sfcityattorney.org/wp-content/uploads/2022/10/FERC-order-10.20.22-20221020-3037-1.pdf January 25, 2022 - D.C. Circuit remanded FERC orders issued in 2019 and 2020 that accepted a Pacific Gas and Electric Company (PG&E) 2014 filing pursuant to section 205 of the Federal Power Act (FPA) 2 transitioning certain San Francisco loads to service under PG&E's Wholesale Distribution Tariff (WDT). At issue on remand - whether a reference to section 212(h)(2) of the FPA 4 in the WDT's customer eligibility provision to determine which customers would be "grandfathered," and thus not responsible for demonstrating ownership or control of certain types of facilities, should be construed consistent with Commission precedent interpreting section 212(h)(2). 5 The D.C. Circuit rejected the Commission's argument that section 212(h)(2) precedent was inapposite in the context of section 205 and 206 proceedings because, as the court explained, the WDT itself "expressly references the criteria of section 212(h)(2)." in light of the court's directions on remand, we determine that San Francisco's customer class-based interpretation of the WDT's reference to section 212(h)(2) is consistent with that precedent and applies in this case. Therefore, we conclude that San Francisco's loads within the customer classes served on October 24, 1992, are entitled to grandfathered service under the WDT. Accordingly, we grant the complaint filed by San Francisco and direct PG&E to submit revised WDT provisions, as discussed herein

1101 LNG: US liquefied natural gas exports fell slightly from 6.96 million short tons in September to 6.91 million short tons in October as plant outages continued to limit volumes, Refinitiv Eikon tanker monitoring data show. Europe remained the top destination for US LNG, while shipments to Asia accounted for 24% of exports, up from 19% the previous

month. Reuters

1101 Methane: Nonprofit organizations such as Well Done and Environmental Innovators of America are using money from donations by corporations and individuals to clean and plug some of the at least one million wells left behind by bankrupt oil and natural gas companies. The US' abandoned wells problem is so big that currently available funding sources fall short to address it, stressing the need for "a larger policy shift, a just transition, because we are likely to see many more wells abandoned at a faster rate in the near future," says Scott Eustis with environmental advocacy group Healthy Gulf. High Country News (Paonia, Colo.) (tiered subscription model)

1101 Wind: Monday, New Jersey utility Public Service Enterprise Group said it is considering deciding whether to pull out of a project that would generate enough power for 500,000 homes, less than two weeks after another New England utility ended another wind project.

1001 Nuclear: EWG: PG&E asks federal regulators to extend life of Diablo Canyon plant

1001 Transmission – Agenda for Joint Federal-State Task Force on Electric Transmission under AD21-15. View the issuance at: https://elibrary.ferc.gov/eLibrary/filelist?accession_num=20221101-3046 A link to the Webcast will be available on the day of the event at https://www.ferc.gov/TFSOET. Agenda – 8 – 10:30 am CT - **Addressing Regulatory Gaps/Challenges in Oversight of Transmission Development**

1031 Load Shedding & DER: NERC White Paper - NERC System Planning Impacts from Distributed Energy Resources Working Group (SPIDERWG) initially set out to provide guidance regarding the aggregate impacts of a distributed energy resource (DER) on under voltage load shedding (UVLS) programs. After a cursory review of industry UVLS practices, SPIDERWG recognized that there are very few (if any) currently active UVLS programs in place today. Therefore, NERC SPIDERWG provided the **White Paper: DER Impacts to Under Voltage Load Shedding rogram Design**, outlining general points for coordination of voltage-sensitive equipment. https://www.nerc.com/comm/RSTC_Reliability_Guidelines/White_Paper-DER_UVLS_Impact.pdf

1031 DER/BPS Reliability – NERC Comment Period Open for Reliability Guideline: Bulk Power System Reliability till 11/18/2022 - Perspectives on the Adoption of IEEE 1547-2018: This reliability guideline provides high-level guidance and bulk power system (BPS) reliability perspectives that should be considered during the adoption and implementation of IEEE 1547-2018. Specifically, this guideline focuses on issues that pertain to distributed energy resources (DERs) that have been identified by NERC SPIDERWG as potentially having an impact on the BPS. ***The guidance provided herein is intended to support state regulators' adoption and implementation of IEEE 1547-2018* as regulators are the entity most likely to fill the role of the AGIR in many cases.** The materials presented will also likely aid authority governing interconnection requirements (AGIRs) in coordinating with Distribution Providers (DPs), Balancing Authorities (BAs), Reliability Coordinators (RCs), and other entities navigating adoption of IEEE 1547-2018 and its requirements. Each of the capability requirements and functional settings require coordination with the RC for their area. This reliability guideline will address key clauses in IEEE 1547-2018 in detail to ensure that BPS reliability perspectives and recommended considerations are made clear. These include, but are not limited, the following: voltage and frequency mandatory trip settings, ride-through capability, DER enter service and return to service operation, DER controls configuration, and interoperability and local DER communication interface considerations. The draft reliability Guideline is posted for a 45-day industry comment period. Draft Reliability Guideline – Clean Version https://www.nerc.com/comm/RSTC_Reliability_Guidelines/Guideline-IEEE_1547-2018_BPS_Perspectives_Combined_clean%20(002).pdf | Draft Reliability Guideline – Redline Version https://www.nerc.com/comm/RSTC_Reliability_Guidelines/Guideline-IEEE_1547-2018_BPS_Perspectives_Combined_redlines.pdf Please submit comments via email john.skeath@nerc.net using the comment form.

1031 Wind: Bureau of Ocean Energy management announces a new 508,265-acre wind energy Auction area 24 nautical miles from the coast of Galveston, Texas and another wind energy area, 174,275 acres, 56 nautical miles from the coast of Lake Charles, Louisiana. Bureau of Ocean Energy Management could propose selling Gulf wind leases before the end of the year

1031 Energy Policy: Biden floats a "Windfall Profits" tax on Oil companies that do not reinvest the return on investment in new fossil fuel production - production that the President promised several times that he would prevent during the presidential election campaign. Unlikely to happen in this or the next Congress.

1031 State Owned Utilities: Advocates of replBureau of Ocean Energy management - acing Maine's privately owned electric utilities with a "consumer-owned" power company are submitting signatures to force a statewide vote on the ballot next year. Opponents countered by announcing they had signatures for their own referendum targeting what they called a seizure of utilities that could increase, not reduce, electric rates. **That proposal would require public approval of debts over $1 billion — effectively requiring an extra vote to take on debt to buy the utilities.**

1031 EVs: The EU wants the US to give the bloc's electric vehicles the same incentives available to Canadian and Mexican vehicles. The EU gives US-made EVs incentives and wants the same consideration. "Ideally, we would like to have the same as Canada and Mexico, but we have to be realistic and see what we can negotiate," Czech Industry and Trade Minister Jozef Sikela says. Reuters

1031 Senate R's letter to the Securities and Exchange Commission questions why staff members are leaving the agency and that encourages the SEC to allow more time for industry response to proposals. The letter notes the agency has proposed 26 rules this year, the most in the past five years. Reuters

1031 Renewables: There isn't enough copper to satisfy the current demand for electric vehicles, power lines and renewables and the situation will only get worse as the energy transition accelerates, warn executives from Freeport-McMoRan, Codelco, Teck Resources and other mining giants. They attribute the shortfall to a variety of factors, including geopolitical tension, long permitting processes, economic uncertainty and skyrocketing demand. The world's copper supply needs to expand by 9.7 million metric tons over the next 10 years, per Wood Mackenzie. Financial Times (subscription required)

1031 Nuclear: Two of Constellation Energy Corp.'s nuclear plants in Illinois will ask the Nuclear Regulatory Commission to extend their operating licenses by two decades, the company said Monday.

1031 Increased Cost Recovery: Farm Groups Rally Against SEC Proposal to Report Climate Data *Kristina Peterson and Patrick Thomas, The Wall Street Journal* Debate over disclosing carbon-emissions data centers on fears big companies would push costs on to suppliers.

1031 COP27 - [**John Kerry's Latest Test Will Be Facing Victims of Climate Change**]() *Jennifer A. Dlouhy, Bloomberg* The top US climate diplomat files his private jet to COP27 with historic legislation to combat rising temperatures, but there are growing calls to shell out billions to countries suffering the worst impacts.

1031 Nuclear - In a win for the United States, Poland chose Westinghouse Electric Co. to build its first nuclear plant near the Baltic Sea coast in an alliance that "guarantees the success of our joint initiatives," Prime Minister Mateusz Morawiecki said, as the nation strives to free itself from relying on Russian energy supplies. The United States and Westinghouse will build the first three reactors of the Pomerania plant, expected to start producing electricity in 2033, as part of a $40 billion plan to build two nuclear power plants, each with three reactors. (The Associated Press)

1031 Energy Policy: Likely new House E & C Chair next congress - current ranking member Rodgers Press Release: High Energy Costs are a Direct Result of Biden's War on American Energy — House Energy and Commerce Republican Leader Cathy McMorris Rodgers (R-WA) released the following statement in response to President Biden again trying to shift blame away from his energy crisis that is making life unaffordable for American families. "Yet again, President Biden is trying to shift blame for high gas prices onto energy companies while threatening them with higher taxes—which would hurt American workers even more, further stifle production, and lead to higher energy prices. The reality is this administration has waged war on American energy since Biden's first day in office. It has made us less energy secure and resulted in everyday life being more expensive for people across the board—from the gas pump to the grocery store. Surging diesel and natural gas prices this winter will only add to the pain people are feeling. It's past time to reverse the high costs of Biden's forced energy transition by flipping the switch for more American energy production and infrastructure. Energy and Commerce Republicans remain committed to leading on solutions to lower costs, reduce emissions, and strengthen our energy security."

1030 Energy Policy: Fossil fuel prices are and will remain elevated and that's good news for the energy transition because it will accelerate investment in renewables, (not so good for American consumers and inflation….) says Bain & Co. partner Gerry Mattios. "For some fossil fuel companies, high energy prices are seen as an opportunity to divest their environmentally unfriendly operations before transitioning to new energy models," Mattios says. Bloomberg

1030 Diesel: A domestic and global crunch in diesel supplies could lift prices for the fuel and lead to higher shipping and heating costs, exacerbating inflation, analysts warn. "Higher diesel prices have the potential to create even stronger inflationary pressures especially if the current price spike is sustained, adding significant downside risk to demand and increasing the chances of a global recession," said Wood Mackenzie analyst Suzanne Danforth. The Hill

1029 IRA: The tax credits in the Inflation Reduction Act will help accelerate renewables deployment and clean energy manufacturing in the US, but it could come at the cost of a slower transition in developing nations. As the US becomes a more attractive market for clean energy products, solar panels and other items will become less available and more costly in India and other nations. "By handing out subsidies, the effect of this act may well be to "distort" the entire renewable energy supply chain," says Mahesh Kolli of Greenko

Financial Times (subscription required)

1028 IRA: Biden administration created the National Climate Task Force to oversee the implementation of the Inflation Reduction Act with former White House Chief of Staff John Podesta and National Climate Advisor Ali Zaidi sharing its helm. The "lean" task force doesn't appear to have many members, but its work will be critical for putting the climate bill -- which is all money and no policy language -- to work. This piece discusses the task force and the goals stakeholders hope to see it accomplish. E&E News

1028 LNG: BIC Magazine: Cameron LNG receives approval on expansion

1028 LNG: **Yahoo! Finance: Europe Can't Rely on US Gas to Plug Growing Gap Next Year**

1028 Energy Policy: Wash Examiner: House GOP promises energy policy change if party wins majority in midterm elections

1028 Transmission: Bloomberg: "Grid Officials Grapple with Clean Energy's Reliability Threats."

1028 IRA: The Production Tax Credits and other taxpayer funded subsides in the Inflation Reduction Act will drive down the cost of new energy projects and the CEOs of DTE Energy, Xcel Energy and CMS Energy say their companies are getting ready to make the most of the legislation. "The extension of tax credits for both wind and solar provide economic certainty and lowers costs for our robust renewable backlog," says CMS Energy CEO Garrick Rochow. E&E News

1028 Nuclear: Constellation, Ameren, EPRI, NEI & contractors Enercon and Jensen Hughes have created a generic framework for using risk insights to improve the use of deterministic aging management programs in ways that could save more than $200 million if applied across the US nuclear fleet. In this interview, experts behind the initiative answer questions about the framework and its applicability, identify regulatory hurdles to implementation and outline next steps. Nuclear Newswire (American Nuclear Society)

1028 Oil giants ExxonMobil and Chevron on Friday reported large quarterly profits and indicated that they plan to stick to capital discipline and to continue providing a return to investors of capital in their company, drawing fresh criticism from President Joe Biden. Exxon earned a record $19.7 billion in the third quarter, up from $6.8 billion a year earlier, while Chevron reaped $11.2 billion, its second-highest quarterly profit .Yahoo/Bloomberg note – Amazon quarterly profits - $140 billion - current return for long time investors: 2014 – negative 6.06% - 2015 negative 12.79 – 2016 positive 19.88% 2017 – negative 3.81% - 2018 – negative 14.94% - 2019 7.23% 2020 Negative 36.21% 2021 57.58% 2022 87%

1028 Transmission - GETS - New transmission projects take time to permit and build, but grid-enhancing technologies are available right now and could help squeeze more capacity out of existing infrastructure, said panelists during the WIRES conference in Washington, D.C. "If we're going to get to deep decarbonization quickly on this grid, we've got to use these technologies quickly and find ways to do it," said Jay Caspary of the Energy Department's Grid Deployment Office. Utility Dive

1028 FERC - EXTENDS DEADLINE FOR REPLIES TO GENERATOR INTERCONNECTION NOPR TO DECEMBER 14 - Notice on Request for Extension of Time re Improvements to Generator Interconnection Procedures and Agreements under RM22-14. You can view the issuance at: https://elibrary.ferc.gov/eLibrary/filelist?accession_num=20221028-3086 On October 18, 2022, Edison Electric Institute (EEI) filed a motion requesting a 30-day extension of time to submit reply comments in response to the Notice of Proposed Rulemaking (NOPR) in this proceeding,[1] from November 14, 2022, to December 14, 2022. EEI notes that the

Commission received over 130 initial comments in this proceeding, some of which included alternative proposals for consideration. Given the number of initial comments and their detailed nature, EEI argues that stakeholders will need more time to review and provide thorough responses. On October 25, 2022, Advanced Energy Economy, the American Clean Power Association, American Council on Renewable Energy, and the Solar Energy Industries Association filed comments supporting EEI's motion. Upon consideration, notice is hereby given that the deadline to submit reply comments in response to the NOPR in this proceeding is extended from November 14, 2022 to and including December 14, 2022.

1028 Energy Policy – Natural Gas: Joseph Nolan, chief executive officer of Springfield, Massachusetts-based Eversource Energy, wrote President Biden asking him to declare an emergency to avoid a potential wintertime natural gas shortage which he characterized as a "serious public health and safety threat."

1028 Renwables: NextEra Energy Inc. to spend $1.1 billion to buy about 30 facilities from Energy Power Partners - facilities that convert gas produced by decomposing waste in landfills into electricity as part of its effort to expand into renewable fuels.

1028 Energy Policy: Wash Examiner: House GOP promises energy policy change if party wins majority in midterm elections (will need veto proof majority in both houses….unlikely in senate – looking closer to a pickup of 30 seats or more so could happen in the House)

1028 Wind – Van Ness Feldman: BOEM's First Offshore Wind Lease on the West Coast: Public Engagement is Critical Click to View Online Version The Department of the Interior's Bureau of Ocean Energy Management ("BOEM") recently published the Pacific Wind Lease Sale 1 for Commercial Leasing for Wind Power on the Outer Continental Shelf ("OCS") in California—the first offshore wind lease sale in the Pacific region. The offshore wind lease sale—which will commence on December 6, 2022—will be for five lease areas comprising approximately 373,268 acres off the coast of northern and central California. Combined, the lease areas, or Wind Energy Areas ("WEAs"), could produce an estimated 4.5 gigawatts ("GW") of offshore, renewable wind energy. This would be enough to power more than 1.5 million homes. The announcement is largely great news for offshore wind development and especially floating offshore wind, but BOEM's approach has some elements, such as disclosure requirements, that could chill investments if not administered properly.

Background

BOEM issued the California Proposed Sale Notice on May 31, 2022, which was followed by a public comment period. BOEM also required that prospective bidders submit qualification materials by August 1, 2022, to ensure bidders are "legally, technically, and financially qualified to hold a commercial wind lease offshore California" pursuant to 30 C.F.R. 585.106 and 585.107.

On October 5, 2022, BOEM completed its National Environmental Policy Act ("NEPA") Environmental Assessments for the Morro Bay WEA and the Humboldt WEA and found that the offshore wind energy leasing activities would have no significant environmental impact. Notably, a NEPA Environmental Impact Statement likely will be required for wind energy project approvals, which would include public notice and a public comment period.

The sale—the first ever Pacific Wind Lease Sale auction—is a key component to achieving the Biden administration's goal of deploying 30 GW of offshore wind energy by 2030 and 15 GW of floating offshore wind energy by 2035. To this end, the Biden administration has launched a number of initiatives to encourage investment in floating offshore wind facilities. For example, the "Floating Offshore Wind Shot," lead by the Departments of Energy, Interior, Commerce, and Transportation, aims to reduce the costs of floating offshore wind energy by more than 70%, to $45 per megawatt, by 2035. President Biden also signed into law the Inflation Reduction Act, which invests $370 billion over the next decade in wind, solar, and nuclear power. The sale also necessary to achieve California's aggressive climate goals, including its aim to reduce greenhouse gas emissions by 85% by 2045 with offsets for any remaining emissions. California's September 2022 climate plan will provide a record $53 billion in climate spending. Accordingly, there is a high demand for development in the region.

Despite this high demand, there are also technical challenges to West coast offshore wind development. As the Pacific OCS is deeper (i.e., drops off more quickly) than the Atlantic, many—if not all—of the West Coast's OCS wind projects will need to utilize floating turbine technology, as opposed to the fixed bottom platform design on most Atlantic Coast projects. Presently, floating turbine technology is more costly than fixed bottom design. However, anticipated technological advancements, in addition to the financial incentives noted above, open opportunities for West coast development.

Lease Areas and Final Sale Notice

The five lease areas are separated into two wind energy areas ("WEAs"): the Humboldt WEA and the Morro Bay WEA. The Humboldt WEA is offshore of Eureka, Arcata, and Trinidad, California and consists of leases OCS-P 0561 (63,338 acres) and OCS-P 0562 (69,031 acres). The Morro Bay WEA is near the cities of Morro Bay and Cambria and consists of three lease areas: OCS-P 0563 (80,062 acres); OCS-P 0564 (80,418 acres); and OCS-P 0565 (80,418 acres). As noted above, the combined leases could produce an estimated 4.5 GW of offshore, renewable energy if all lease areas are developed.

BOEM's Final Sale Notice ("FSN") announced which entities may participate as bidders in the lease sale as well as specific lease stipulations. Of note, one stipulation requires a semi-annual progress report from lessees on regular engagement with Tribes and parties potentially affected by the lessees' activities. Public engagement—particularly with Tribal and Environmental Justice communities—is a critical component to informed development. Although lessees should be engaging early and often with affected communities and stakeholders, there is a concern that requiring a progress report on these communications to the agency could have the reverse effect, i.e., discourage open communications. This is because once those communications are reported to BOEM, the information may be subject to a Freedom of Information Act ("FOIA") request if one of the limited exemptions to FOIA disclosure does not apply. This could make public what would otherwise be private communications between communities and developers. For this reason, BOEM should ensure that lease stipulations *encourage* early and open communication between lessees and potentially impacted communities.

For More Information -- Van Ness Feldman counsels clients on offshore wind siting, permitting, interconnection and market registration processes, and commercial transactions. If you would like more information about the FSN and permitting processes for offshore wind energy, please contact Mike Farber, Rachael Lipinski, Erin Anderson, Molly Lawrence, or Mosby Perrow.

1028 The Hill: Biden signs climate treaty aimed at limiting greenhouse gases used in refrigeration

1027 Energy Policy: Fossil fuel demand is expected to plateau worldwide starting in the next few years, according to the International Energy Agency. Higher prices and loss of Russian-sourced energy because of the war in Ukraine have influenced the timetable set by the IEA, which expects fossil fuels to hold an under-75% share of global energy supplies by 2030, after maintaining an 80% share for decades. The Wall Street Journal

1027 E&E reports Senate Energy and Natural Resources Committee is eyeing Nov. 15 for FERC Chair Richard Glick's confirmation hearing. Senate approval from all 50 Democrats would likely be needed to move Glick's nomination through the chamber by the year's end. Republicans have balked at supporting Glick because of his record with fossil fuel project approval timelines. Committee rules mandate only a week's notice for a committee hearing, so changes to the exact hearing date could still occur.

1027 Gas: WSJ: Europe's feared natural-gas shortage has vanished into vapor. The WSJ's Joe Wallace reports the surge in supplies is sending prices lower and easing fears of winter fuel shortages and rationing as the continent weans itself off Russian energy. The dramatic turnaround is the result of a massive logistics undertaking, as Europe began bringing in gas from places including the U.S. and Qatar in an effort that has roiled energy markets. Dozens of liquefied natural gas tankers are floating offshore European ports. While facilities capable of receiving the supercooled liquefied natural gas are in short supply, some traders are keeping their cargo aboard ship, hoping prices rise before they unload. Europe's comfortable position could be temporary. Rough winter weather could boost demand, driving up prices and cutting into supplies.

1027 EVs - EV charging station rollout hampered by outdated state, city regulations: report *Dan Zukowski, Utility Dive* Better coordination among governments and with the private sector are needed to speed the EV transition, says a new Fuels Institute report.

1027 Fox News: CBS calls out 'inconvenient truth' behind Biden's 'clean energy' electric vehicle push In a report aired on Thursday's "CBS Mornings," CBS News environmental reporter Ben Tracy traveled to Tamarack, Minnesota, where residents told him they were concerned a nickel mine being developed on local farmlands would have a toxic impact on their water. Ironically, the mine was funded through a grant by the Biden administration to develop batteries for electric vehicles, as part of its "green energy" agenda. "75% of battery manufacturing is done in China. To change that, the Biden administration is awarding $2.8 billion in grants to a dozen states all in an effort to boost battery production. .."A group of homeowners worried about sulfuric acid runoff from the mine leaking into pristine waterways have banded together to fight the project," he reported..The corporation conducting the drilling project, Talon Metals Corp, received $114 million from last year's Infrastructure bill to develop a processing facility for the nickel mine. "Talon hopes to open the Minnesota mine in 2026 when the only other U.S. nickel mine is set to close. It says it will create 300 jobs in the poorest county in the state. The company already has a deal to supply nickel to Tesla. Now it's up to the state of Minnesota to approve the mine, and some people who live here have questions," Tracy said. "Where is the scientific data that says this is safe?" one local woman asked Tracy. Another homeowner said, "Asking Talon or asking any mining company about how they're going to take care of the community and the environment is kind of like asking the fox how he's taking care of the chicken coop."

1027 OpED: Joe Manchin Can Stop a Partisan Energy Takeover at FERC *C. Boyden Gray, The Wall Street Journal* A Democratic supermajority would aid Biden's efforts to stop critical infrastructure.

1027 Resilience: Great River Energy Assesses its Resilience T&D World

1027 Drones: Entergy Arkansas Drone Team Takes New Approach to R&R T&D World

1027 Microgrids: Community Microgrid a First for Wisconsin T&D World

1027 Energy "Investments" IEA says clean energy investment may exceed $2 trillion a year by 2030 — but it's not enough *Anmar Frangoul, CNBC* Clean energy investment could be on course to exceed $2 trillion per year by 2030, an increase of over 50% compared to today, according to analysis from the International Energy Agency.

1027 GHG: UN weather agency: Greenhouse gases reach new record in 2021 *Jamey Keaten, The Associated Press* The three main greenhouse gases hit record high levels in the atmosphere last year, the U.N. weather agency said Wednesday, calling it an "ominous" sign as war in Ukraine, rising costs of food and fuel, and other worries have elbowed in on longtime concerns about global warming in recent months.

1027 Energy Policy: Biden Team Reworks Plan for Russia Oil-Price Cap as Markets Sour *Saleha Mohsin et al., Bloomberg* US officials have been forced to scale back a plan to impose a cap on Russian oil prices, following skepticism by investors and growing risk in financial markets brought on by crude volatility and central bank efforts to tame inflation.

1027 Storage: Battery Storage for Rural Networks T&D World

1027 Pacific Research Institute's Energy Reality Report No. 15: As OPEC Cuts Quotas, Manchin and Others Ask Why the U.S. Itself Isn't Producing More Petroleum On Oct. 5, OPEC Plus, the Organization of the Petroleum Producing Nations (OPEC) and 13 non-OPEC nations, including Russia and Mexico, agreed to cut daily production by two million barrels starting in November. The decision should have been expected. The oil producers have said they want to be "proactive and preemptive" – in this case, getting out ahead of an expected global economic slowdown that will surely reduce demand for oil and gas.

According to the Financial Times, "the actual cut to supply will be less — probably closer to 1 million barrels — as many members such as Nigeria are already producing below their targets." In addition, the effect of the decision has so far been minimal. The price of a barrel of oil on the futures market for December delivery went from $87 on Oct. 5 to $92 on Oct. 9 but has since settled back to $89, far below the peak of $110 in early June.

Still, if you take into consideration the invasion of Ukraine, the move came as a shock – and a particularly unwelcome one since it was seen as benefiting Russia, which depends on petroleum revenues to fund the war and is counting on a scarcity of energy to put pressure on Europeans this winter to reduce their support for a total Ukrainian victory.

But probably most important, the decision by the oil producers, led by Saudi Arabia, was a wake-up call – as if one were needed – for the U.S. to produce more natural gas and oil domestically. Blaming the Saudis misses the point. The real issue is American energy policy. Sen. Joe Manchin (D-WV), the chairman of the Energy and Natural Resources Committee, wrote to President Biden on Oct. 11:

> **The reckless steps OPEC+ has recently announced to cut production and fuel Vladimir Putin's war machine have made it clearer than ever that the United States must step up and increase our energy production, both for our own domestic use and also to support our friends and allies. It is unconscionable for America, with our abundant natural resources that can be produced cleaner than anywhere else in the world, to continue relying or consider increasing reliance on**

authoritarian regimes to do for us what we can do for ourselves.

Manchin was especially concerned about reports that the White House would "unlock sanctioned oil production from Iran or Venezuela." He notes that both countries, in addition to being global miscreants, are dirty oil producers: "Iran emits more than twice as much methane per barrel of oil produced than the U.S., and Venezuela emits a staggering six times as much."

Instead of unreliable, high-emission sources, Manchin wants U.S. policy to encourage our own producers in the Marcellus, Utica, Permian, and Alaska – and in Canada's Alberta. He added, "At the same time, we must continue to invest in and deploy clean energy technologies—including solar and wind, nuclear, hydrogen, carbon capture, and energy storage—because all of our energy resources can play a key role in energy security and decarbonization.

1027 Pacific Research Institute's Energy Reality Report No. 15: Reviving Permitting Reform?

Manchin in his letter advocated "comprehensive reforms to our energy permitting processes that accelerate permitting decisions without bypassing environmental protections or community input." This is a brief description of his permitting reform legislation, which has hit a major roadblock with opposition from both the left wing of the Democratic Party and from Republicans, as we explained in our Issue No. 16 of this newsletter.

The White House and congressional leadership had agreed to bring permitting reform to a vote, and the strategy was to attach it to the must-pass Continuing Resolution (CR) to fund the government after Sept. 30. When it became clear that the CR wouldn't pass this way, Manchin agreed on Sept. 27 to pull his legislation, known as the "Energy Independence and Security Act."

According to an eight-page summary, the legislation would give the administration authority to designate 25 large projects of "strategic national importance," updated every six months, that would receive "priority Federal review." The list would include projects involving "critical minerals, fossil fuel (including biofuel), non-fossil fuel (including storage), electric transmission, carbon capture, and hydrogen projects."

A Bloomberg Law report on Oct. 20 stated, "Democrats and Republicans are far apart on overhauling federal permitting, leaving little common ground if and when lawmakers take another stab at moving" the Manchin bill. However, the legislation could still hitch "a ride on a must-pass vehicle such as the fiscal 2023 National Defense Authorization Act or a year-end omnibus spending bill."

In a Forbes opinion piece on Sept. 28, David Blackmon, a Texas policy analyst, wrote:

> **It doesn't really matter how much money is thrown at a given energy infrastructure project: If you can't get the permits to move forward, the project can't and won't get done. Despite the apparent conceit of progressive members of the U.S. House and Senate and the anti-fossil fuel activist groups who help fund their campaigns, this principle applies every bit as directly to renewable energy projects as it does to oil, gas and coal projects. It's a reality they do not yet appear to fully grasp.**

Manchin's letter to Biden goes beyond permitting reform legislation as a means of increasing U.S. energy production. For example, he urges the White House to "finalize and implement the next offshore oil and gas leasing Five-Year Program as soon as possible, including the proposed program of 11 offshore oil and gas lease sales under consideration in the July draft." He also wants to "ensure Clean Water Act implementing regulations are focused on compliance with water quality standards and do not create an opportunity to deny needed projects for reasons unrelated to water quality."

Manchin also asked the Administration to "identify any projects pending federal review that can bring new energy production online within the next year and expedite reviews for those projects." He cites the Mountain Valley Pipeline, which runs from his home state to Virginia. The original application for the project was filed in 2015. It will "create capacity for an additional 2 billion cubic feet per day of natural gas production at a time when our natural gas prices are the highest in decades."

As for Republicans, they generally agree with a spokesperson for Rep. Cathy McMorris Rodgers (R-WA), ranking member of the House Energy and Commerce Committee: "If President Biden and the Democrats want to lower energy prices and not be dependent on OPEC+, they would reverse their war on American energy and join Republican-led efforts to reclaim our energy dominance to lower costs for hardworking families."

1027 **Pacific Research Institute's Energy Reality Report No. 15: Tom Friedman of the NY Times: You Can't Just 'Flip a Switch'** Manchin and Republicans in Congress aren't the only ones espousing a policy of energy transition by reducing mindless restrictions on fossil fuel production and transmission vehicles like pipelines. Tom Friedman, the New York Times columnist and ardent environmentalist, takes a similar position. He wrote on Sept. 13:

"The U.S. and its Western allies [must] stop living in a green fantasy world that says we can go from dirty fossil fuels to clean renewable energy by just flipping a switch." He added:

We have a long transition ahead, and we will make it only if we urgently embrace smart, pragmatic thinking on energy policy, which in turn will lead to greater climate security and economic security. Otherwise, Putin can still hurt Ukraine and the West badly.

If we want to get oil and gas prices down to reasonably low levels to power the U.S. economy and, at the same time, help our European allies escape the vise grip of Russia while we all also accelerate clean energy production — call it our "Energy Triad" — we need that transition plan that balances climate security, energy security and economic security.

But the most important factor for quickly expanding our exploitation of oil, gas, solar, wind, geothermal, hydro or nuclear energy is giving the companies that pursue them (and the banks that fund them) the regulatory certainty that if they invest billions, the government will help them to quickly build the transmission lines and pipelines to get their energy to market.

Friedman wrote in May, using the same metaphor: "For too long, too many in the green movement have treated the necessary and urgent shift we need to make from fossil fuels to renewable energy as though it were like flipping a switch — just get off oil, get off gasoline, get off coal and get off nuclear — and do it NOW, without having put in place the kind of transition mechanisms, clean energy sources and market incentives required to make such a massive shift in our energy system."

Friedman also refers to a McKinsey's 2022 Global Energy Perspective, which concludes that "the global energy demand for electricity could triple" by 2050, "primarily driven by increased electric vehicle uptake." That electricity can't come solely from renewable sources. Fossil fuels are a necessity for decades to come. Currently, according to the Energy Information Administration (EIA), 38% of electricity in the U.S. is generated by natural gas, 22% by coal, 19% by nuclear, and only 20% by renewables (9% wind, 6% hydro, 3% solar, 2% biomass and geothermal).

Renewable use for electricity generation has doubled since 2010, but is still far behind fossil fuels

Friedman refers to "transition incentives" not yet in place. One problem is that "many people don't want wind farms, solar fields, electricity lines — or natural gas pipelines — in their backyard." He cites a $3 billion power line, the TransWest Express, which would connect a massive new wind farm in Wyoming to the Southwestern U.S., supplying renewable energy to about two million customers. That project has been held up by red tape for 17 years, and not a single wire has been strung.

In a Wall Street Journal opinion piece, Mohammed Alyahya, a fellow at the Harvard Belfer Center's Middle East Initiative and a senior fellow at the Hudson Institute, wrote on Oct. 13, "Blaming Saudi Arabia, or OPEC+, or Vladimir Putin, for an energy crisis that results from a policy of switching from carbon fuels to 'clean energy'—on the basis of what look like utopian assumptions—is disingenuous.... The oil prices U.S. consumers pay are due to choices their leaders made." He added:

The causes of this reversal, which left the U.S. dependent on imported oil at a dangerous geopolitical moment, aren't a mystery. In the 2020 election, American politicians, from **Joe Biden** down, ran and won on a set of policies intended to wean the American economy off fossil fuels in favor of so-called clean energy. These policies included bans on fracking, bans on drilling, closing down the Keystone Pipeline and other infrastructure built to serve future energy needs, and subsidizing alternative energy, such as solar, and electric cars.

Now, we're reaping the whirlwind we created. In a separate editorial, the Wall Street Journal's editorial board stated:

> The White House does all it can to discourage U.S. oil production in the name of climate change, but then it begs foreign countries to produce more to reduce soaring gasoline prices. It alienates allies like Saudi Arabia that could produce more, but then courts the dictators who lead Iran and Venezuela so they can sell more oil and have more money to stir anti-American trouble. Wouldn't it be easier, and better for U.S. interests, to unleash U.S. oil production?

1027 Pacific Research Institute's Energy Reality Report No. 15: Just Saying No to NOPEC By contrast, some in Congress are advocating an end to military cooperation with Saudi Arabia and other OPEC countries, which would appear to be a wildly counter-productive measure at a time when Russia and China are threatening global security.

Perhaps a more dramatic proposed punishment comes in the form of a so-called NOPEC bill, standing for "No Oil Producing and Exporting Cartels." The legislation, which was approved by the Senate Judiciary Committee in May, would let the Justice Department file antitrust suits against OPEC and its national oil companies, which are currently exempt from this kind of jeopardy because they have foreign sovereign immunity by law.

The bill has bipartisan backing. It was introduced by Sen. Chuck Grassley (R-IA), the ranking member of Judiciary, and was co-sponsored by Sens. Mike Lee (R-UT), Amy Klobuchar (D-MN), and Patrick Leahy (D-VT. The committee's chairman, Sen. Dick Durbin (D-Ill), says he wants it passed by the end of the year. But Majority Leader Chuck Schumer (D-

NY), who has a packed to-do list between the Senate's return after the November election and year-end adjournment, hasn't said whether he'll bring the measure to the floor.

The NOPEC bill was first introduced by Sen. Herb Kohl (D-WI) back in 2000 and was re-introduced in 15 more iterations through 2012 and again in 2021, but it took on more urgency as a result of OPEC's action on Oct. 5. If the bill reaches a vote on the Senate floor, passes both houses and becomes law, it is doubtful it will affect OPEC's behavior, nor will it impact current oil prices, which are influenced by forces of supply and demand that are beyond OPEC's ability to control. But a NOPEC law would almost certainly encourage other countries – perhaps beyond OPEC – to take similar steps against U.S. firms, especially in the technology sector.

According to a Politico report on Oct. 7, the "threat of NOPEC and similar legislation might serve as a fast ball to brush back OPEC on occasion, analysts said. But enacting it and unleashing lawsuits against OPEC members would lead to a new level of antagonism between the U.S. and the cartel, potentially spooking oil markets. It also wouldn't necessarily bring down prices at the pump anytime soon, analysts said." For this reason as well as for political strategy, Republican support (beyond a few Senators) for a NOPEC bill is uncertain.

Not only the Wall Street Journal, which said the bill would help push "our erstwhile allies in the Middle East further into the arms of Russia and China," but also the Washington Post have raised criticisms of the NOPEC legislation. The Post's editorial board on Oct. 8 urged Congress and the Administration "to avoid any action, in the heat of an election campaign, that might make matters worse" after the OPEC decision. While taking a softer position on the bill than the Journal, the Post said the legislation was "fraught with potential unintended consequences, including retaliatory legal action against the United States and its businesses."

Instead, the Post editorialists wrote:

> As the world's second- and third-largest crude oil producers, Saudi Arabia and Russia have leverage — in the short run. Reducing that leverage and restoring U.S. freedom of action over the longer term mean taking advantage of our domestic supplies of fossil fuels and green energy…. Legislation to facilitate the build out of transmission lines and other critical energy infrastructure is now doubly urgent.

The Post ends with this important historical observation: "Ultimately, the 1973 oil embargo backfired on its authors because it shocked the United States and other industrialized countries to use energy much more efficiently. A smart response can turn the OPEC Plus production cut to the United States' ultimate advantage as well."

1027 Pacific Research Institute's Energy Reality Report No. 15: Are FERC Chairman Glick's Chances of Confirmation Really Getting Better? The long-running saga of the confirmation of Richard Glick to a second term as chairman of the Federal Energy Regulatory Commission (FERC) seems to be moving to a climax. As we have noted in the past, Glick, who has been called "Biden's most effective climate warrior" by Politico, was nominated for a new term back in May, but Chairman Manchin and others on the Senate Energy and Natural Resources Committee raised doubts. Manchin is taking his time, and Glick's nomination still has not been debated in committee at a confirmation hearing.

Politico, nonetheless, reported on Oct. 13 that Glick is saying "he's optimistic he'll get a confirmation hearing by the end of the year, in part because of reassurances from Majority Leader Schumer and the White House.

"I'm being told that there's a lot of folks — the White House, Sen. Schumer, others — that are working hard towards the confirmation," Glick said during a conference hosted by the American Council on Renewable Energy. "They're confident, and so I'm going to remain confident." But he also admitted that the process is not under his control.

Control, of course, rests with Manchin, who has stressed reliability as a priority for FERC, rather than the introduction of issues that go beyond the commission's stated mission. Earlier this year, Manchin and other members of the committee expressed dismay at Glick's moves to increase the role climate effects would play in pipeline approvals. In a March 3 hearing of his committee, Manchin criticized FERC for its "shortsighted attack on fossil fuel resources." The Chairman told reporters that Glick "went way out of his wheelhouse" with the policy changes and told him to "just do your damn job."

In response, FERC made what Manchin called a "course correction," delaying but not definitively ending implementation of the new rules. Since then, there's been no resolution of FERC's position on the climate framework for pipelines.

Glick's term ended in June. Under FERC rules, he can remain in his position through December but must leave if no action is taken by then on his confirmation. The commission has a 3-2 Democratic majority.

If Manchin does bring the nomination before the committee, he can be expected to question Glick closely and perhaps better understand commitments on the direction of FERC policy going forward.

1027 Pacific Research Institute's Energy Reality Report No. 15: New England Forced to Compete With Europe for Scarce Natural Gas Power producers in New England are preparing for a potentially difficult winter. As demand rises in Europe, it will bump up against reduced supply because of the war in Ukraine. That means much higher prices – several times more than last year if weather is severe.

ISO New England, the regional independent system operator, has warned of possible rolling blackouts as the region competes with Europe for scarce resources. Power producers in New England know about the threat – it's not a shock – and are taking steps to mitigate it by building reserves and getting ready for conservation steps. But as the Wall Street Journal reported:

> **Power producers in New England are limited in their ability to store fuel on site and face challenges in contracting for gas supplies, as most pipeline capacity is reserved by gas utilities serving homes and businesses. Most generators tend to procure only a portion of imports with fixed-price agreements and instead rely on the spot market, where gas prices have been volatile, to fill shortfalls.**
>
> **"Anybody who is depending on the spot market for their natural-gas supply is probably going to have a pretty significant sticker shock," said Tanya Bodell, a partner at consulting firm StoneTurn who advises energy companies in New England.**

Another big problem for New England is the Jones Act, a century-old protectionist law that limits which ships can travel between U.S. ports. The law, says the Journal, "makes maritime delivery of domestic supplies nearly impossible, so the region relies on gas produced abroad." Because New England has limited pipeline capacity, those imports by liquefied natural gas (LNG) carriers can represent one-third of the natural gas supply during periods of peak demand.

As a report by the Cato Institute recently noted, there are about 600 ships carrying

LNG around the world, and none of them is "U.S.-flagged, U.S.-built and mostly U.S.-crewed and owned as required by the 1920 law to transport goods within the United States." The report adds:

> **Such a vessel isn't likely to appear anytime soon, if ever…. The result is that the Jones Act has effectively placed U.S. LNG off-limits to New England (and Puerto Rico). While bulk quantities of U.S. LNG have been exported to 37 countries since 2016, they cannot be sent by ship to other parts of the United States.**

Gordon Van Welie, the CEO of ISO New England wrote to Energy Secretary Jennifer Granholm in August in support of a July letter to Granholm signed by the six New England governors in July. The governors asked "to suspend the Jones Act for the delivery of LNG for all or part of the winter of 2022-23." Van Welie also warned of a serious long-term problem for the region: growing demand for the use of electricity to power vehicles at the same time that natural gas for generating that electricity is so difficult to procure.

In the Journal piece on Oct. 17, reporters Katherine Blunt and Benoît Morenne pointed out that "this summer, the European benchmark price for natural gas topped $100 per million British thermal units. Gas prices in New England, by comparison, rarely reach much above $30." That differential now "encourages suppliers to provide gas to Europe rather than New England."

Public officials at all levels will have to do everything in their power to prevent a catastrophe in New England this winter.

1027 Pacific Research Institute's Energy Reality Report No. 15: The Strategic Petroleum Reserve Gets Much Smaller Gas prices and inflation are shaping up to be the most important issues on voters' minds as they head to the polls in November. This reality presents challenges for the incumbent party, which is why the Biden Administration has released more than 200 million barrels of oil so far this year from the Strategic Petroleum Reserve. Now, right before the midterm elections, the White House announced on Oct. 18 that it will release 15 million more barrels the Reserve, the world's largest supply of emergency crude, as a means of putting even more downward pressure on prices.

The oil stocks, owned by the federal government, are stored in "huge underground salt caverns at four sites along the coastline of the Gulf of Mexico," according to the Department of Energy. The size of the SPR "makes it a significant deterrent to oil import cutoffs and a key tool in foreign policy." As oil is withdrawn, it contributes to global supply, helping to meet demand in the open market and thus limit or reduce prices.

But concern is growing that President Biden is depleting the emergency stash. According to the EIA, the SPR peaked at 727,000 barrels in June 2011. Under President Trump, it fell from 695,000 to 638,000 barrels. After record drawdowns by this White House, the reserve has declined to just 405,000 barrels, as of Oct. 14 – its lowest point in 38 years.

The U.S. produces 12 million barrels of petroleum a day, so the release of another 15 million barrels from the SPR covers only about 30 hours of America's production. Those 15 million barrels compensate for about 15 days of the reduced supply announced by OPEC on Oct. 5.

Tapping the SPR just before critical congressional elections that could turn on the issue of inflation has struck many critics as short-sighted. Their concerns are that the U.S. is now producing a million fewer barrels of oil a day than it was in March 2020 and that drawing on the SPR is a drain on a critical asset, needed in a national security crisis or natural disaster. Typically, presidents have only tapped into the SPR during times of national emergency, including, for example, Hurricane Katrina in 2005 and Hurricane Harvey in 2017. Draining our emergency reserves leaves the country vulnerable to supply disruptions that may occur in the near future.

Critics have responded. For example, Craig Stevens, spokesman for the Grow America's Infrastructure Now (GAIN) Coalition of businesses, trade associations, and labor groups, stated Oct. 13 in a press release:

> **Tapping the SPR is a political band-aid attempting to cover the gash of Biden's failed energy policy. For nearly two years, this administration has consistently blocked the construction of critical energy infrastructure and made it more difficult to produce American oil and natural gas. President Biden must change course and promote the national security, energy security, and economic security interests of American citizens by allowing more U.S. development of energy.**

1027 **Pacific Research Institute's Energy Reality Report No. 15: The US Tries to Catch up on Offshore Wind Power:** The Interior Department's public comment period closed Oct. 17 for a major offshore wind project in New England called Revolution Wind, a joint venture of Orsted, a Danish company that's the world leader in wind generation, and Eversource, the largest energy provider in the region. Located 15 miles south of the Rhode Island coast, 32 miles southeast of the Connecticut coast, and 12 miles southwest of Martha's Vineyard, Revolution Wind will provide 304 megawatts of energy to Connecticut and 400 MW to Rhode Island. Both states have aggressive goals: Connecticut wants 100% of its electricity to come from zero-carbon sources by 2040, and Rhode Island, by 2030.

Offshore wind generation is an attractive energy source because winds blow stronger far out in the ocean. Until recently, however, technology was lacking to sustain large turbines in deep waters.

Europe has been installing offshore wind generation since 1991 and today has 5,402 turbines across 12 countries, with a capacity of 25 gigawatts, or 25,000 MW. The U.S., as we noted in Issue No. 16 of this newsletter, is a latecomer to offshore wind, but on Sept. 15, the Biden Administration launched an initiative to develop new floating wind platforms, which will serve to speed up deployment. The President, according to a White House fact sheet, set a goal of "deploying 30 gigawatts (GW) of offshore wind by 2030, enough to power 10 million homes with clean energy, support 77,000 jobs, and spur private investment up and down the supply chain."

Recently, the Bureau of Ocean Energy Management, the agency charged with overseeing the offshore wind industry, announced it would be holding the first offshore wind lease sale in California – a move that opens up 4.5 GW of potential. The lease auction, which is expected to generate significant interest, is slated for December 6.

Currently, offshore wind barely shows up on a graph, and it will take another two years before the U.S. gets to installed capacity of 2 gigawatts, according to the EIA. Revolution Wind, at nearly three-quarters of a gigawatt, will be a big help in getting to the Biden goal, but many other projects are on the books. The Offshore Wind Market Report of the Wind Technologies Office of the Energy Department stated in August that projects with 40 gigawatts of capacity are "now in various stages of development."

The report pointed out that "the estimated levelized cost of energy for commercial-scale offshore wind projects in the United States declined 13% to $84/MW-hour on average." The Biden Administration over the past year has added "six new lease areas…in the New York Bight, two new lease areas in Carolina Long Bay, and plans to lease new areas in California, Gulf of Mexico, Central Atlantic, Oregon and Gulf of Maine."

Offshore wind is a good example of the way that the U.S. power grid is being diversified, as part of an "all-of-the-above" strategy to provide reliable and affordable energy. As we noted above, demand for electricity in New England is rising sharply. Revolution Wind will provide enough clean energy to power more than 350,000 homes.

The overwhelming majority of stakeholders who filed comments about Revolution Wind supported completion of the project. For example, James ("Spider") Marks, a retired Army general, wrote:

> **I am confident that the final approval and construction of Revolution Wind will help our country become more energy secure and reduce our dependence on foreign sources of energy. As a retired US Army General officer with deep and current experience in national security challenges, I know firsthand how important domestic energy production is to the security of our nation.**

Other examples of support came from the North Kingstown, R.I., Chamber of Commerce, and from former Rep. Albert Wynn (D-MD), who noted that "Orsted has already committed $77.5 million of a $157 public-private partnership to redevelop the New London State Pier in Connecticut – a project that is estimated to create 460 construction jobs. Orsted and Eversource have pledged to invest an additional $40 million to improve Rhode Island's port infrastructure."

1027 **Pacific Research Institute**'s **Energy Reality Report No. 15: Questions Raised About the Administration's Oil and Gas Leasing Program; Conservation Project Funding Could Suffer**

Another important comment period ended recently as well. This one involves the Interior Department's five-year offshore oil and gas leasing program, announced on July 1. There are major questions still about the plan, which would allow up to 11 new lease sales – 10 in the Gulf of Mexico and one in Alaska's Cook Inlet – between 2023 and 2028, but exactly how many is up in the air. The final figure could, in fact, be zero.

If the sales go through large sums, a major beneficiary will be the Land and Water Conservation Fund (LWCF), established in 1964. The little-known LWCF receives $900 million annually from oil and gas leasing revenues, which are dispensed to the states for outdoor recreation and conservation projects.

ConservAmerica, a non-profit organization "dedicated to the development and advancement of sound environmental and conservation policy," has published a new report and interactive map and website titled, "Land and Water Conservation Fund: State-by-State Outlook: Implications from Offshore Oil and Gas Leasing Policies," pointing out that the LWCF is the single largest dedicated funding source of conservation and outdoor recreation in the United States. Projects being funded by the LWCF include protecting indigenous people's cultural sites in Georgia, watersheds in Washington state, and river access in South Carolina.

Said Jeff Kupfer, president of ConservAmerica and a former top Energy Department official:

> Some elected officials and groups villainize offshore leasing without considering the full implications of banning it. Besides harming our country's energy security, banning offshore drilling would bankrupt the LWCF, shattering our ability to provide

access to the great outdoors and wildlife conservation.

Doubts about the Biden Administration's commitment to lease sales are fully justified. The President, after all, campaigned on a promise to end offshore drilling, and in May, the Interior Department canceled the lone Alaska sale that was included in the expiring five-year leasing program. As the Washington Examiner pointed out, "Biden acted to restrict new oil and gas leasing during his first week in office but has seen his power limited. A federal court ruled against his executive order pausing new leasing last summer, a ruling the administration is currently appealing."

Times have changed. The Ukraine war has demonstrated the importance of the U.S. producing more oil and gas for our national and global security. "Our allies in Europe are facing an energy crisis forcing the closure of manufacturing businesses and impacting supply chains which also leads to inflationary pressures throughout their economy," 21 Republican Senators, pressing for an expansive final leasing program, wrote to Secretary of the Interior Deb Haaland.

"We are concerned," they wrote, "by the Department's suggestion that a no lease option is a possibility for the final program." The letter added:

Further, failure to conduct any lease sales which encourage bidding could, as the Department says, cause increased air emissions from substitute production, primarily from overseas imports….

American families are struggling to keep up with rising costs due to inflation, high energy prices, and persistent supply chain issues. In addition, local businesses that are part of the ecosystem of U.S. energy production are being confronted with decisions that impact their employees and employees' families due to uncertainty about future natural resource development.

1027 Energy Policy: House Committee on Oversight and Reform ranking member Cormer (KY-R) & Mace (R-SC) letter to DOE Secretary re: Biden's "potential misuse" of the nation's emergency oil reserves to lower gasoline prices. From Bloomberg article on the letter: "The letter comes amid Republican ire over the administration's use of the SPR to tame high gasoline prices ahead of the Nov. 8 midterm elections that will decide control of Congress." Letter also – noted: "We are concerned that the president may soon impose an oil and gas export ban that will result in even higher gas prices, supply chain issues, global market upheaval, and reduced energy security for the US and our allies,"

1027 Rail Strike still a possibility but not until after the elections -- in December. Note - strike would affect deliveries of disinfection chemicals to water utilities, power company supplies including coal -etc if it happens) Union members of the National Brotherhood of Railway Signalmen overwhelmingly torpedoed the collective bargaining proposal (which gives them a 24% wage increase and more flexible sick days) Wednesday the second one to do so. Five more unions are scheduled to vote on contract proposals by mid-November. The rejection won't immediately trigger a strike. Any one union can effectively shut down the RRs if they walk off the job in December.

1027 Michigan – Governor signs HB 6019 directing MI PSC to commission a consulting firm to conduct a feasibility study on nuclear generation in Michigan. The study must consider the advantages and disadvantages of nuclear generation in the state, ways to maximize the state's workforce in the construction of new nuclear generation, the timeline for new nuclear development, and the potential impact of nuclear generation in supporting an energy transition, among other considerations.

1026 Pipelines: **Gazette-Mail: FERC taking comment on proposed 4.5 mile pipeline expansion project targeting Wetzel & Greene County, PA to deliver gas to Monroe County, Ohio**

1026 Market: NGI: Fifth Circuit orders FERC to Reassess $20M BP Fine for Alleged Natural Gas Market Manipulation in 2008

1026 Resiliency: FERC approves MISO reliability contract to keep Ameren Missouri's Rush Island coal plant operating – to maintain grid reliability --- Industry Dive

1026 Nuclear: Decision on whether to restart Michigan's Palisades nuclear power plant could come by January, contingent on whether the plant qualifies for funding under DOE's Civil Nuclear Credit Program, said Holtec International communications executive Patrick O'Brien. The company must overcome several challenges before it can reopen the plant, but O'Brien said they're not insurmountable. BNN Bloomberg (Canada)

1026 Energy Policy: E&C R's: Leader Rodgers on Fox News: GOP Will Push to Unleash American Energy on Day OneT he best way to reverse the damage of Biden's energy crisis and drive down energy prices is by flipping the switch and unleashing American energy here at home. America can and must lead the world in reducing emissions — without trading our energy security, affordability, and reliability to the Chinese Communist Party, Russia, or Saudi Arabia. That is why E&C Republicans are leading on solutions to restore our energy leadership and protect our way of life. House Energy and Commerce Committee Republican Leader Cathy McMorris Rodgers (R-WA) appeared on Fox News' America Reports on Wednesday to discuss Republican solutions to make energy cleaner, reduce emissions, prioritize energy security, and keep energy costs low. Check out these highlights from Leader Rodgers' interview.

BIDEN'S WAR ON AMERICAN ENERGY

"Our economy wouldn't be in this recession, we wouldn't have the raging inflation, the high costs of everything — food, gas, everything — if it wasn't for President Biden's reckless spending and his war on American energy.

"We are living this every day. Every time Americans go to fill up their car with gas, or go to the grocery store and see the high food prices, they are experiencing and living the impact of President Biden and the Democrats' reckless agenda, especially what the President has done to shut down American energy.

"Our economy is built on energy. It is foundational to everything we do."

"We need to produce more energy here in the United States of America and we are blessed with abundant energy resources. We do it better than any other place in the world."

UNLEASHING AMERICAN ENERGY TO LOWER PRICES AND RESTORE OUR SECURITY

"On day one, we can send a very clear signal [to industry] that we want to produce here in the United States of America.

"[American energy production] is the number one way to drive down gas prices, ensure our national security, as well as bring down carbon emissions.

"[Republicans] would say 'yes' to more pipelines and implement permitting reform.

"This administration has leased fewer acres of federal lands for oil and gas drilling than any president since Harry Truman.

"We need the permitting reforms. That's one of the biggest barriers. We have agencies in the federal government that are shutting down projects."

GOP SOLUTIONS TO RESTORE ENERGY DOMINANCE AND REDUCE EMISSIONS

"We'll go to work on day one. We have a whole package around securing a cleaner energy future. I've also introduced the American Energy Independence from Russia Act.

"We need to flip the switch on American energy. It's saying 'yes' to more American energy.

"Since day one we've seen prices go up under President Biden. He shut down the Keystone pipeline. Let's say 'yes' to the Keystone pipeline. Let's say 'yes' to more pipelines. Let's build more hydropower plants and nuclear plants.

"We have led the world in bringing down carbon emissions. Natural gas has been a big part of that. That's what we should be unleashing it for the rest of the world.

"We should export LNG, not say no to these projects. That's what Republicans are going to start on day one."

1026 Energy Policy: Bad policies are holding back domestic production and supply and demand forces, not refiners, determine prices at the pump, oil industry groups responded after President Joe Biden issued a new call for oil companies to adjust pump prices to reflect lower oil prices. "With energy costs and geopolitical instability around the world continuing to rise, it's time for Washington to focus on leveraging American energy production to confront the global mismatch between energy demand and available supply that has driven fuel prices higher," an American Petroleum Institute spokesperson said. S&P Global

1026 LNG: Pipeline and Hazardous Materials Safety Administration Wednesday authorized a project to add a fourth liquefaction unit to the Cameron LNG export plant in Louisiana and modify the facility to accommodate simultaneous loading of two vessels. Construction on the new 7.44-million-short-ton-per-year unit is scheduled to begin next year and be completed in 2027. Reuters

1026 Solar: Business Alert: Plan for biggest US airport solar energy farm expected to land soon at Kansas City International

1026 Resiliency – NE: Administration trying to expand a little-used emergency fuel reserve in New England as the East Coast grapples with shortages of both gasoline and diesel. The 1 million-barrel reserve won't be enough to counter a severe disruption this winter and are considering numerous options to bolster supplies. (note – from earlier clip: "Bloomberg notes that New England is particularly susceptible to a shortage of home heating oil, since this is the primary fuel used to heat homes in this area of the country. Currently, stockpiles are estimated to be 1/3 of typical levels for this time of year, according to government data. ***Statistics show that typically at this time of year, there are over 10.79 million barrels of #2 fuel oil in inventory; this year it is hovering at about 3.48 million barrels.*** If the winter is colder than normal, as some have predicted, such a shortage could lead to Americans in this part of the country freezing to death. Moreover, even if the fuel is available, the exorbitant costs could force New Englanders to choose between eating and heating their homes.")

1026 Energy Efficiency: S 422 Signed – Bulb Replacment improving Government with High Efficiency Technology Act. directs the GSA to issue guidance to federal agencies for the procurement and use of the most life-cycle cost effective and energy efficient lighting systems to increase the efficiency, effectiveness, and economy of public buildings that are constructed or managed by the GSA. This bill also requires the GSA to provide information to federal, state, local, and tribal entities about procuring and using such lighting systems.

1026 Hydrogen: H 9018 Hydrogen Infrastructure Finance and Innovation Act introduced. bill directs the Energy Secretary, in coordination with EPA, the Council on Environmental Quality, EIA, and other agencies to conduct a study to: 1) assess the potential layout of pipeline corridors that are robust against a range of projected hydrogen demand features; 2) synthesize the results from research, development, and demonstration projects on materials and metallurgy for transporting and storing hydrogen and hydrogen-rich fuels; 3) determine outstanding questions regarding hydrogen and hydrogen-rich fuels; 4) investigate the behavior and environmental impact of hydrogen leakage in pipelines and from geologic storage sites; 5) determine best practices for the construction and maintenance of hydrogen pipelines; 6) determine the percentage at with hydrogen must be blended into the natural gas network to substantially reduce carbon intensity; and 7) establish a framework for the measurement, reporting, and management of hydrogen leaks. This bill also directs the Secretary, in consultation with the FERC, the Surface Transportation Board, and the PHMSA to establish a hydrogen infrastructure finance and innovation pilot program to provide financial assistance to eligible entities through grants or long-term, low-cost supplemental loans. The Secretary must prioritize eligible projects that maximize net impact in avoiding or reducing greenhouse gas emissions, and are sited in a manner that minimizes environmental disturbance. This bill also directs the Secretary to select projects that: 1) are large-capacity, common carrier infrastructure; 2) enable geographical diversity in associated projects and supply chains to produce, use, or store hydrogen; 3) generate the greatest benefit to low-income or disadvantaged communities; and 4) maximize the creation or retention of domestic jobs. Additionally, this bill sets parameters and requirements for the loans administered through the pilot program. Each entity that receives a loan or grant through the pilot program must conduct a hydrogen leakage monitoring, reporting, and verification program and a hydrogen leak detection and repair program. $100,000,000 is appropriated for the pilot program for years 2023 through 2027. Chance of passage this Congress = zero.

1026 Energy Policy – Iran: Israeli President Isaac Herzog warned President Joe Biden on Wednesday of a mounting Iranian "challenge" as Tehran continues its brutal crackdown over widespread protests led by young Iranians and U.S. efforts to revive the Iran nuclear deal flounder. At the start of an Oval Office meeting with Biden, Herzog noted it had been 40 days since the death of Mahsa Amini (a young woman arrested for allegedly violating Iran's strict Islamic Dress code requiring women to wear headscarves) in Iranian security custody - , which spurred the protests across Iran. Police have also denied allegations that Amini was beaten and insisted that she died after suffering a heart attack. He also noted that Iran was "moving toward" becoming a nuclear power and alluded to Tehran providing Russia with drones that are "killing innocent citizens in Ukraine." "Today, the Iranian regime is crushing thousands of Iranian citizens— young men and women — who are demonstrating and simply pleading to have their own liberties," Herzog said. "I think the Iranian challenge will be a major challenge that we are discussing." Israeli officials have made the case to Biden that reviving the 2015 nuclear agreement would not stop Tehran from achieving its nuclear ambitions and would destabilize the region.

1026 Gas Prices trending down avg $3.49 nationally – only $1.36 over December 2020 "median" prices of $2.13 in Dec 2020. National average price for a gallon of gasoline has fallen by $1.25 since the June peak of more than $5 – current avg $3.49.

1026 Transmission & "permitting" reform: Energy Secretary Jennifer Granholm told her advisers

Tuesday that the administration will continue pushing for Congress to pass permitting changes following the midterm elections, "We are hopeful within this next period, perhaps after the election, we will see permitting reform that allows us to accelerate the deployment of transmission, and any other blockage, like permitting blockages, that allow us for the movement of electricity around the country," she said. She, for instance, pointed to a November 2021 Maine voter referendum that blocked a $1 billion, 145-mile-long transmission line that proposed to carry 1,200 megawatts of Quebec-produced hydropower to customers in Massachusetts.

1026 Mountain Valley: Energy Wire: Court poised to block key Mountain Valley pipeline permit. The US Court of Appeals for the Fourth Circuit leaned toward remanding a water permit for the Mountain Valley natural gas pipeline to the WV Depart. of Environmental Protection for further review during oral arguments Tuesday in a case brought by environmental groups. The judges scrutinized inconsistencies and probed whether the new permit adequately protects the state's waterways from sedimentation. E&E News

1026 Natural Gas – Energy Wire: Why Natural Gas Prices plunged 40% since August- the sharp drop in gas prices could affect the energy sector from Texas to Ukraine. … US EIA says a combination of factors has pushed down the benchmark U.S. price to about $5.60 per million British thermal unit, down from a peak of $9.85 two months ago. Production of gas is up, and cooler weather means less gas is being used to run electricity-hungry air conditioners so natural gas that would have gone to power generation can go into storage (for the winter) instead. At the same time, a shutdown at a major U.S. export facility means there's more U.S. gas available for domestic consumption. BUT those quoted in the article suggest consumer bills will still be high for the half of U.S. homes heated with natural gas as well as those whose electricity is generated in gas powered plants (about 38 percent of US electricity) because very little gas is bought on the spot markets by the gas utilities . . .

1026 Solar – Net Metering: Georgia Power has overcharged customers nearly $1.9B since 2011, solar groups allege Georgia Power has collected $1.87 billion beyond the revenue level approved by the Georgia Public Service Commission since 2011, according to **Oct. 20 testimony** from solar industry groups. The earnings overage suggests that Georgia Power's request to close or alter multiple residential tariffs in order to recover $1.4 million in costs from households with rooftop solar is unnecessary, according to **Kevin Lucas,** Solar Energy Industries Association senior director of utility regulation and policy. SEIA is calling for additional oversight by the Georgia PSC to put an end to excessive billing by Georgia Power.

1026 Reliability: The Phoenix: Guest column ex NARUCian Terry Jarrett: U.S. faces costly energy crunch this winter To put it bluntly, the news isn't good. Americans are going to face some very costly heating and electricity bills this winter. And New England may even experience blackouts.

Let's start with energy prices. U.S. government data shows that the cost of electricity has climbed 15.5 percent since last year. That's the largest jump in 41 years. And at the same time, the price of natural gas has climbed an astonishing 33.1 percent.

Why are natural gas prices rising so much? Heavy demand, plus a lack of alternatives. Europe is trying to wean itself from Russian natural gas — and gobbling up exports of America's liquefied natural gas. Unfortunately, this conflicts with America's own power needs, since natural gas is used to produce the largest share — 38 percent — of U.S. electricity generation.

It's helpful that U.S. natural gas production has hit record levels. But America's natural gas exports are also increasing. And at the same time, on-demand sources of power such as coal and nuclear are disappearing. If anything, the U.S. needs more energy, but the nation's coal fleet is being pushed aside faster than reliable alternatives can take its place. That's troubling because coal plants once provided balance against electricity price spikes. But that balance is now eroding.

This is particularly problematic for New England since the region is overly dependent on natural gas for both electricity production and home heating. Unfortunately, New England is highly averse to adding new gas pipelines — and has systematically disassembled its coal fleet years ahead of potential renewable energy additions. That has left New Englanders reliant on the same U.S. liquefied natural gas that's also being shipped across the Atlantic to Europe.

As a result, the Federal Energy Regulatory Commission (FERC) foresees real trouble. The commission explains that America's increasing reliance on thousands of miles of sprawling gas pipelines could pose serious "constraints" for both New England and California this winter.

FERC is also warning that the pace of U.S. coal plant closures is alarmingly mismatched with the speed of potential replacements. FERC explains that coal plants "possess higher accreditation values." Translation: Coal plants are more reliable than weather-dependent wind turbines and solar panels.

As a result, Americans face a double whammy. Energy prices are soaring, since overseas demand is squeezing the U.S. natural gas market. But at the same time, America's power grid is increasingly being hitched to both natural gas and intermittent wind and solar.

Something has to give, including potential power outages this winter — or power shortfalls next summer when demand surges past available supply.

America's energy transition is in jeopardy since replacement power simply isn't coming online at the speed and scale needed to maintain affordable, reliable electricity.

America's policymakers need to pivot. Rather than race to dismantle more coal plants, the U.S. must recognize the essential utility of its remaining coal fleet as a reliability and affordability backstop. This may be a contentious issue for some. But Washington should take stock now — and ensure a solid U.S. power grid while there's still time.

1026 "Reliability Rider" **NorthWestern pitches utility regulators on 'reliability rider' - Montana Free Press** The utility is asking the Public Service Commission for a "new regulatory mechanism" to recover gas plant construction costs

1026 Rates – WI: **State to hold public hearings in Green Bay, discuss proposed electricity price increases**

1026 FERC Insight: October 2022 - FERC staff 2022-2023 Winter Energy and Market Reliability Assessment says U.S. electricity markets are projected to have adequate amounts of generating capacity to maintain reliable operations this winter, though grid operators in certain regions may face challenges during periods of extreme weather.
Presentation | Report | News Release

1026 FERC Insight: October 2022 -FERC has amended the eFiling User Guide to reflect increases in the eFiling file size, the number of characters allowed for each file name, and the addition of a file type to the list of acceptable file types submitted. **eFiling User Guide**

1026 Reliability: **LET OpEd: Biden, the one-man pandemic, now has northeast facing heating oil**

shortage and rations as winter looms The one-man pandemic is ready to unleash a true "winter of death," only this time it won't be hyperbole about the coronavirus, but rather from the pen of one Joseph Robinette Biden. According to the *Boston Herald,* northeastern areas of the United States are facing rationing of #2 home heating oil this winter. Along with possible shortages, homeowners who use oil to heat their homes are also facing unprecedented per gallon costs.

In fact, in parts of New England, including Connecticut and Maine, fuel is already being rationed, with some wholesalers in Connecticut putting retail fuel oil dealers on allocation.

This means that these companies, many of which are family owned, can only get a limited amount of fuel oil based on availability, according to Chris Herb, president of the Connecticut Energy Marketers Association. That organization represents some 600 family-owned home heating retailers in the Nutmeg State. In turn, those wholesalers are thus required to ration oil to their consumers.

The move was made in order to prevent panic buying, according to Bloomberg which calls attention to an extreme shortage of the vital heating fuel in both the New York Harbor and New England regions. The shortage has suddenly caught the attention of the White House, even though it was predictable months ago.

Earlier this week, Biden economic adviser Brian Deese told Bloomberg Television that diesel inventories are "unacceptably low" and said that "all options are on the table" to increase supply while cutting costs to consumers.

Of course the fact the Biden administration has waged war on the fossil fuel industry is behind the shortage of #2 home heating oil, as well as all-important diesel fuel, which powers an overwhelming majority of tractor trailers across the United States.

Already faced with a crippling supply chain crisis, which has yet to be fully dealt with by the administration, anything that cripples the ability to get product to market could prove catastrophic.

Bloomberg notes that New England is particularly susceptible to a shortage of home heating oil, since this is the primary fuel used to heat homes in this area of the country. Currently, stockpiles are estimated to be 1/3 of typical levels for this time of year, according to government data. ***Statistics show that typically at this time of year, there are over 10.79 million barrels of #2 fuel oil in inventory; this year it is hovering at about 3.48 million barrels.*** If the winter is colder than normal, as some have predicted, such a shortage could lead to Americans in this part of the country freezing to death. Moreover, even if the fuel is available, the exorbitant costs could force New Englanders to choose between eating and heating their homes.

1026 FERC Insight: October 2022 -Now Available: A Clearer and Easier View of FERC Proceedings
FERC is now livestreaming Commission meetings, tech conferences and other events directly on FERC.gov and the FERC YouTube channel. Subscribe to the FERC YouTube channel and click "Subscribe" – YouTube will automatically send you a notification when any FERC event begins.

1026 FERC Insight: October 2022 –Staff Appointments: [] Glick Announces Two Deputy Director Appointments Eric Vandenberg has joined the FERC Office of Electric Reliability as Deputy Director, while Michael McLaughlin is the new Deputy Director of the Office of Energy Policy and Innovation. News Release [] **Director of FERC's Dispute Resolution Service Named -**

Stephen J. Williams has been named FERC's new Director of the Dispute Resolution Service. **News Release**

1026 FERC Insight: October 2022 -FERC Staff Report Offers Lessons Learned from CIP Reliability Audits FERC staff's annual report offers recommendations to help users, owners and operators of the bulk-power system improve their compliance with the mandatory Critical Infrastructure Protection reliability standards and their overall cybersecurity posture. **News Release | Report**

1026 FERC Insight: October 2022 -A Look Ahead

Nov 2 1:30 pm - 3:00 pm FERC-D2SI Security Branch Fall 2022 Webinar
Nov 8 10:00 am - 1:00 pm NAESB Gas-Electric Forum | November 8, 2022
Nov 10 Noon - 5:00 pm Annual Commissioner-Led Reliability Technical Conference
Nov 11 Veterans Day
Nov 15 9:00 am - 11:30 am 5th Meeting - Joint Federal-State Task Force On Electric Transmission
Nov 17 10:00 am - 11:00 am November 17, 2022 Open Meeting

1026 Renewables: Bloomberg White paper: "Tariffs (aka US tariffs against Chinese solar panels among other things) Threaten to Undermine Global Shift to Clean Energy" As you read the white paper – should know something about John Helveston, the author of the white paper – whose bio page says " I am a researcher, engineer, choice modeler, enthusiast, musician, swing dancer, and an Assistant Professor at George Washington University in the Department of Engineering Management and Systems Engineering. I study technological change, with a focus on accelerating the transition to environmentally sustainable and energy-saving technologies" According to his CV – he spent three years in China studying, inter alia, "Business Chinese" and lists as among his "research interests" "U.S.-China Climate Relationship: Study the critical relationship between the US and China in developing and mass producing low carbon energy technologies." The white paper certainly reflects his background and interests - finding [1] prices for solar modules could be as much as 25% higher than they would otherwise be by 2030 due to tariffs and other protectionist policies [2] Protectionist measures would limit the free flow of goods, talent and capital, slowing the global energy transition and encouraging more fossil fuel consumption. Bloomberg notes that in 2012, Obama slapped duties of as much as 249% on Chinese solar panels in an effort to prop up American factories but - aided by a government that subsidized a spending surge on solar, China emerged victorious, accounting for the manufacture of 79% of the world's panels. Remember the 90s and Japan subsidizing its industries?

1025 LNG: At a recent summit in Japan, US Ambassador to Japan Rahm Emanuel, Alaska Gov. Mike Dunleavy, Sen. Dan Sullivan, R-Alaska, and other Biden administration officials promoted Alaska Gasline Development's proposed Alaska LNG export project and its potential to help meet Japan's energy needs. **E&E News Anchorage Daily: LNG summit in Japan promotes Alaska's $39 billion North Slope gas project**

1025 Diesel – (aka - everything that moves by 18 wheeler gets more expensive) : Diesel supplies are low as winter nears in the Northern Hemisphere, and Goldman Sachs expects prices to continue to increase, despite a focus on curbing energy costs. Goldman has increased a forecast for gas and diesel prices in 2023 to $4.32 and $5.07 per gallon, respectively, and has written in a client note, "Refining constraints can create a sharp wedge between where crude and product markets clear, making policy management of crude supply less effective at controlling consumer prices." BNN Bloomberg (Canada)

1025 Pipelines: Roanoke Times: Mountain Valley Pipeline's permit to cross streams in West Virginia faces legal challenge

1025 Hydro: Hydropower was once thought of as one of the most reliable forms of renewable energy, but that's quickly changing as drought conditions and heat waves deal a blow to the world's waterways. Hydropower generation in Europe declined by 75 terawatt-hours during the first nine months of the year and a similar downward trend can be seen in the US. When designing power systems, "[y]ou really have to think about the possibilities **Bloomberg**

1025 Renewables – Troutman Pepper: New IRA Tax Incentives for US Manufacturing in Renewable Energy Sector View original

On August 16, President Biden signed the Inflation Reduction Act of 2022 (IRA) into law, which includes landmark tax incentives for domestic energy production and manufacturing with the goal of reducing carbon emissions in the United States by roughly 40% by 2030. A significant aspect of the IRA, described in detail in our summary, is clear support for U.S. manufacturers of equipment used in renewable energy projects and electric vehicles (EVs) through three powerful tax incentives:

Advanced manufacturing production credit;

Increased production tax credit (PTC) and investment tax credit (ITC) for energy projects that satisfy domestic content requirements; and

EV credit that is fully available only if (1) required percentage of the “critical minerals” in the battery are extracted or processed in the United States or a country with a U.S. free-trade agreement or are recycled in North America and (2) required percentage of the battery is manufactured or assembled in North America.

Advanced Manufacturing Production Credit

The IRA adds a new advanced manufacturing production credit (AMPC) with respect to “eligible components” produced in the United States (or a possession). The credit is only available if the eligible component is produced as part of the taxpayer’s trade or business, and generally, it must be sold to an unrelated person (although related-party sales are permitted in certain situations, subject to additional guidance and clarification from the IRS). Eligible components include specific components of solar, wind, and battery projects, such as blades, inverters, battery cells, photovoltaic wafers, and solar modules, as well as certain critical minerals; each eligible component is accorded a specified dollar amount of credit. The AMPC phases down for most eligible components to 75% for sales in 2030, 50% for sales in 2031, 25% for sales in 2032, and 0% thereafter. A U.S. manufacturer is eligible for the AMPC for components produced and sold after December 31, 2022.

U.S. manufacturers may, subject to certain limitations, elect to receive a direct cash payment of the AMPC. For certain U.S. manufacturers, the AMPC represents a potential cash flow source that otherwise would not be there and should be considered when valuing an applicable company.

Domestic Content Enhancement

The PTC and the ITC are available for a wide range of renewable energy projects, including wind and solar farms. The IRA provides for an increased credit rate for PTC and ITC projects that satisfy domestic content requirements, including the requirement that any steel, iron, or manufactured product incorporated in the facility or project be produced in the United States. Under the IRA, manufactured products are deemed to have been produced in the United States if not less than 40% (or 20% for offshore wind facilities) of the total costs of all such manufactured products incorporated in a facility or project are attributable to manufactured products (including components), which are mined, produced, or manufactured in the United States. If these requirements are met, the increase in PTC is 10% of the inflation-adjusted credit amount, and the ITC generally increases by 10 percentage points to 40% (*i.e.,* 33% of the credit).

EV Credit Battery Sourcing Requirements

For vehicles placed in service between 2023 and 2032, the IRA replaces the existing EV tax credit with a new Clean Vehicle Credit, worth up to $7,500 with two $3,750 components:

Component 1 will be met when a certain percentage of the critical minerals in the battery are extracted or processed in the U.S. or a country with a U.S. free-trade agreement or are recycled in North America. The applicable percentage increases every year by 10% through 2027 when 80% of critical minerals in the battery must comply with these provisions.

Component 2 will be met when a certain percentage of the battery is manufactured or assembled in North America; *i.e.,* as of January 1, 2024, at least 50% of the component parts of EV batteries must be produced/manufactured in North America, which increases by 10% each year through 2029 when 100% of battery contents must comply with these provisions.

Vehicles meeting one, but not both requirements, will be limited to a $3,750 credit.

In addition, the IRA excludes from the definition of "new clean vehicle" any vehicle placed in service after December 31, 2024 whose battery contains critical minerals extracted, processed, or recycled by a "foreign entity of concern" and any vehicle placed in service after December 31, 2023 whose battery contains components manufactured or assembled by a "foreign entity of concern." A foreign entity owned by, controlled by, or subject to the jurisdiction or direction of the government of China, currently the world's leading producer of battery components, is on the list of "foreign entities of concern."

All three tax incentives described above are expected to provide important support to U.S. manufacturers in the renewable energy and clean energy markets, creating new opportunities for investing in the U.S. energy transition. Optimizing these incentives requires a keen understanding of the IRA and the underlying industries.

1025 Energy Policy: US now has just 25 days of diesel supply (according to EIA) — the lowest since 2008. Here's why that's more alarming than a dwindling 'oil piggy bank' Yahoo Finance: Unlike gas and jet fuel, demand for diesel recovered at a much faster pace from the pandemic. Diesel is used for transporting goods as well as powering construction, farming and military vehicles and equipment. In 2021, the U.S. transportation sector alone consumed 46.82 billion gallons, or 1.11 billion barrels of distillate fuel (essentially diesel fuel) — at an average of about 128 million gallons a day. https://finance.yahoo.com/news/us-now-just-25-days-160000619.html

1025 Hydrogen: ExxonMobil, Chevron, New Fortress Energy and other energy companies have recently unveiled plans to pursue hydrogen projects in the US that may qualify for tax credits under the Inflation Reduction Act. ExxonMobil's hydrogen site in Baytown, Texas, is expected to be among the largest in the world. Houston Chronicle (tiered subscription model)

1025 Natural Gas Prices: Spot natural gas prices at the Waha hub in the Permian Basin of West Texas sank below zero for the first time in two years Tuesday, trading at around negative $2 per million British thermal units, as takeaway capacity constraints, weak gas demand and flaring limits fuel a supply glut. "A crackdown on flaring both from regulators as well as self-imposed by some of the companies themselves has forced the spot market to go negative as sellers desperately look for outlets for their gas," explained Uplift Energy Strategy senior strategist Paul Phillips. BNN Bloomberg (Canada)

1025 SPR Releases: Valero Energy is prepared to buy more crude from the Strategic Petroleum Reserve as it expects emergency oil releases to continue through the end of this year, the oil refiner said after reporting better-than-expected quarterly profits. The company earned $2.82 billion in the third quarter, up from $463 million a year earlier, and saw refining margins more than double year over year to $5.9 billion. Reuters

1025 Nuclear: DOE-EM: WIPP Emplaces Last Waste Container in Panel, Marking Milestone

1025 Nuclear: DOE-EM: West Valley Ships First Waste Containers From Main Plant Takedown

1025 Nuclear: Coal-to-nuclear conversions using small modular reactors can reduce costs for utilities and create high-paying jobs in coal communities, contended industry experts at two recent nuclear energy events hosted separately by the American Nuclear Society and the Atlantic Council. In addition, deploying advanced reactors at coal sites would be more convenient than building them from scratch thanks to existing community acceptance, reusable land, water and transmission infrastructure, and trained workers, the panelists said. S&P Global

1024 Nuclear: Idaho National Laboratory is getting $150 million from the Inflation Reduction Act to fund nearly a dozen infrastructure improvement projects at its Advanced Test Reactor and Materials Fuels Complex, which plays a key role in the development of advanced nuclear technologies, the Energy Department has announced. "More than 300 commercial reactors operating around the world today can trace their roots back to Idaho National Laboratory, and these infrastructure investments allow America to continue leading the world in groundbreaking nuclear energy research and development," says Energy Secretary Jennifer Granholm. The Associated Press

1024 Wind: Politico: Offshore wind transmission anticipation

1024 Storage - Long-duration batteries could free the grid from fossil fuels *Lisa Martine Jenkins, Protocol* Form Energy CEO Mateo Jaramillo explains the promise of iron-air batteries and why the grid needs multiple types of storage to be truly decarbonized and resilient.

1024 GHG: The Biden administration's calculation for the social cost of carbon, which is used to calculate economic damages from greenhouse gas emissions, was upheld by the 8th U.S. Circuit Court of Appeals, which said the 13 states that sought to revive the lawsuit could not challenge a metric that had not yet been used by the federal government to make decisions. The administration calculates the social cost at $51 per metric ton of carbon dioxide emissions, which was raised from $10 per metric ton set by the Trump administration. (Reuters)

1024 Nuclear Waste - DOE's Advanced Research Projects Agency-Energy, or ARPA-E, said it will spend $38 million on a dozen projects to find ways to recycle nuclear waste from power plants. The projects will use a technology for reprocessing not used for decades out of concern for high costs and fears of proliferation. (Reuters)

1024 U.S. EPA begins work to set up EJ $27 bln green bank *Valerie Volcovici, Reuters* The Environmental Protection Agency (EPA) on Friday began the process of designing a $27 billion green bank that will offer grants to disadvantaged communities around the United States to deploy low- or zero-emissions projects.

1024 Global Climate Summit Is Heading for a Geopolitical Hurricane *Marc Champion and Salma El Wardany, Bloomberg* The energy crunch intensified by Russia's invasion of Ukraine has set the stage for [more] backsliding.

1024 Storage: DOE: Lax oversight pushed taxpayer-funded battery tech to China *Benjamin Storrow, E&E News* A government laboratory failed to adequately monitor a cutting-edge battery storage project, ultimately paving the way for technology developed by federal scientists in the United States to be deployed in China, according to an investigation by the Department of Energy.

1024 Storage Battery capacity in the US more than tripled since the start of 2021: report *Stephen Singer, Utility Dive* Massachusetts ranks 5th in storage capacity, having increased behind-the-meter capacity by linking it with solar and efficiency.

1024 Natural Gas/Hydrogen: Pennsylvania Gov. Tom Wolf and top state lawmakers are working on a sweeping economic development package that would provide $180 million worth of annual tax credits through 2045 to various industries, including $80 million to support natural gas development and $50 million for hydrogen production. Companies would need to invest at least $500 million in a project and create 1,200 temporary or permanent jobs to be eligible for the tax incentives. Spotlight PA

1024 SEC expensive GHG Disclosure rule: Securities and Exchange Commission Chair Gary Gensler has dismissed reports that the SEC's climate disclosure rule will be released within weeks, noting the SEC is sifting through 15,000 public comments on the proposal. "In terms of timing, it's really about when the staff feels they're ready to serve things up," Gensler says. InvestmentNews (tiered subscription model)

1024 Hydrogen – Congressional Research Service: R47289| Hydrogen Hubs and Demonstrating the Hydrogen Energy Value Chain R47289 Martin C. Offutt

1021 Pipelines- Mountain Valley:Virginia Mercury: Mountain Valley Pipeline halts eminent domain actions for Southgate extension Mountain Valley Pipeline has decided to withdraw eminent domain actions against land in North Carolina the company sought for its Southgate extension, a 75-mile offshoot of the main pipeline that would carry gas from Pittsylvania south to Rockingham ...

1021 FERC Jurisdiction - Courthouse News: Gas market manipulation The Fifth Circuit ruled the Federal Energy Regulatory Commission improperly fined BP $20 million for manipulating the natural gas market after Hurricane Ike in 2008 because the agency does not have jurisdiction over intrastate gas transactions....

1021 Energy Policy – 1st Biden Lease Sale – required by IRA - The **Bureau of Ocean Energy Management is set to offer unleased oil and gas acreage in the Gulf of Mexico in a March 29 sale, marking the Biden administration's first oil and gas auction in the region as mandated by the Inflation Reduction Act.** Biden had paused federal oil and gas lease sales when he took office, but a provision in the Inflation Reduction Act required resuming auctions in the Gulf of Mexico and off the coast of Alaska. (Reuters)

1021 LNG: Sierra Club: South Texas Communities Tell FERC: Rio Grande LNG and Texas LNG are Environmental Injustices to the Rio Grande

1021 Geothermal: **Drilling 12 Miles Down to Tap Geothermal Energy** *Mark Bergen, Bloomberg*
Quaise Energy, a Boston company, is using tech from nuclear fusion experiments to reach new depths.

1021 Natural Gas: **Wash Examiner: Daily on Energy: EU agrees on gas price cap after tough debate on surviving winter**

1021 Market Oversight – Affiliate: **Utility Dive: FERC deems Evergy, Bluescape investment firm to be affiliated in market oversight ruling**

1021 Pipelines: **Oil&Gas Finance: Northern Lights 2023 natural gas pipeline expansion gets positive …..FERC draft EIS**

1021 **NRDC Switchboard: FERC's Winter Outlook Shows Need for an Updated Grid** (OP ED – nothing new here – same arguments combined with an unrealistic view of how fast any transition can occur …but article does include links to the FERC **Winter Energy Market and Reliability Assessment** and the **National Oceanic and Atmospheric Administration** (NOAA) forecast above-average winter temperatures for most of the United States. On its face, the NOAA forecast was welcome news, but nothing is guaranteed.

1021 **New England, Texas, MISO face possible capacity shortfalls in extreme winter weather: FERC**

1021 SEC: The Securities and Exchange Commission might back off on requiring corporations to disclose their Scope 3 emissions as part of a climate disclosure rule, according to people familiar with the matter, as a draft of the proposed rule does not currently include the emissions disclosure. The regulations could be finalized as early as next month, but the emissions rule touted by climate hawks has been a flashpoint for business leaders who say the increased paperwork and associated costs would be too prohibitive. (Semafor)

1021 EVs - Federal agencies would need to add around 30,000 zero-emission vehicles annually in order to meet federal emissions goals, according to a report from the Government Accountability Office, which also pointed out agencies would need about 25 times the current number of charging ports. An executive order issued in December mandated that new federal vehicle purchases must be zero-emission by 2035, with light-duty vehicles falling under the mandate by 2027, encompassing about 380,000 vehicles total. (The Hill)

1021 Nuclear: **Rep. Levin: Rep. Mike Levin Introduces Legislation to Improve Public Engagement with the Nuclear Regulatory Commission** new "office of public engagement" --- wow…what an improvement…..

1021 Biden-Harris Administration Announces $28 Million to Advance and Deploy Hydropower Technology ***Bipartisan Infrastructure Law Funding Will Grow the Hydropower Industry, Create Jobs, and Engage Key Stakeholder Voices***

The U.S. Department of Energy (DOE) today announced more than $28 million across three funding opportunities to support research and development projects that will advance and preserve hydropower as a critical source of clean energy. Funded through President Biden's Bipartisan Infrastructure Law, this funding will support the expansion of low-impact hydropower (such as retrofits for dams that do not produce power) and pumped storage hydropower, the development of new pumped storage hydropower facilities, and engagement with key voices on issues like hydropower fleet modernization, sustainability, and environmental impacts. President Biden's Inflation Reduction Act also includes a standalone tax credit for energy storage, which will further enhance the economic attractiveness of pumped storage hydropower. Hydropower will be a key clean energy source in transitioning away from fossil fuels and meeting President Biden's goals of 100% carbon pollution free electricity by 2035 and a net-zero carbon economy by 2050.

"Hydropower has long provided Americans with significant, reliable energy, which will now play a crucial role in achieving energy independence and protecting the climate," said **U.S. Secretary of Energy Jennifer M. Granholm**. "President Biden's Agenda is funding critical innovations to capitalize on the promise of hydropower and ensure communities have a say in building America's clean energy future."

Hydropower accounts for 31.5% of U.S. renewable electricity generation and about 6.3% of total U.S. electricity generation, while pumped storage hydropower accounts for 93% of U.S. utility-scale energy storage, ensuring power is available when homes and businesses need it.

The funding opportunities include:

Advancing the sustainable development of hydropower and pumped storage hydropower by encouraging innovative solutions to retrofit non-powered dams, the development and testing of technologies that mitigate challenges to pumped storage hydropower deployment, as well as opportunities for organizations not extensively engaged with DOE's Water Power Technologies Office to support hydropower research and development. **(Funding amount: $14.5 million)**

Supporting studies that facilitate the licensing and eventual construction and commissioning of new pumped storage hydropower facilities to facilitate the long-duration storage of intermittent renewable electricity. **(Funding amount: $10 million)**

Uplifting the efforts of diverse hydropower stakeholders to discuss and find paths forward on topics that include U.S. hydropower fleet modernization, hydropower system sustainability, and hydropower facilities' environmental impact. **(Funding amount: $4 million)**

The three funding opportunity announcements are available on EERE Exchange.

Learn more about the Water Power Technologies Office in DOE's Office of Energy Efficiency and Renewable Energy.

1021 Wind - Nossaman LLP: BOEM Issues Final Lease Sale Notice for First Ever Pacific Offshore Wind Lease Sale View original On October 18, 2022, the U.S. Bureau of Ocean Energy Management (BOEM) made available the Final Sale Notice (FSN) for the Morro Bay and Humboldt Wind Energy Areas (WEAs) offshore of California. The FSN was published in the Federal Register on October 21, 2022.

Of the five leases being offered for sale, three are in the Morro Bay WEA and two are in the Humboldt WEA. The leases will not authorize development of offshore wind facilities, but will grant the lessee an exclusive right to conduct site assessment and characterization activities and submit a construction and operations plan to BOEM for approval.

The lease sale will take place via an auction scheduled for December 6. That sale represents the expansion of offshore wind development to the Pacific Coast and the first U.S. commercial offshore wind lease in water depths requiring the use of floating foundation technology.

The FSN summarizes several conditions of the leases that have been the subject of intensive stakeholder and inter-agency engagement by BOEM since before the issuance of the Proposed Sale Notice. In response to a joint comment letter submitted to BOEM by California state agencies, BOEM has agreed to incorporate into the leases the conditions of

Coastal Zone Management Act Consistency Determinations that the California Coastal Commission issued for the California WEAs earlier this year. These conditions require bidders to coordinate with the California Coastal Commission in the development of project-specific site assessment and construction and development plans, implement vessel speed limitations and marine mammal monitoring measures, avoid intentional contact with hard substrate, rock outcroppings, seamounts, or deep-sea coral/sponge habitat and include a buffer of at least 40 feet from hard bottom substrates that fully protects these habitats from bottom contact, among other conditions. To avoid impacts to cultural resources, the lessees will be required to submit descriptions of methods that are proposed to be used to conduct archaeological surveys. Lease stipulations will also include progress reports and stakeholder and agency engagement reports throughout the lease term.

The FSN provides that up to 30 percent of combined bidding credits are available to potential bidders for commitments to support workforce training programs and community benefits agreements with coastal users, tribes and other communities or groups expected to be affected by development under the lease. Pursuant to the FSN, benefits provided to the impacted communities should not duplicate benefits or mitigation measures that may be imposed upon the lessees under any law with the exception of the Outer Continental Shelf Lands Act. This means that environmental mitigation and avoidance measures that will be incorporated into the project approvals as a result of state environmental reviews, including the California Environmental Quality Act, may be in addition to commitments made by the lessees under community benefits agreements.

The FSN lists 43 entities that have qualified to participate in the lease auction. In order to encourage competition between developers, the FSN also requires entities wishing to bid to identify any other qualified entities with which they are affiliated (for example, if they share common ownership or are subsidiaries of the same parent company). If multiple affiliated entities have qualified, only one affiliate will be allowed to bid. In each round of the auction, a bidder may only bid for one of the offered leases, although it can switch its bid between different lease areas from round to round. Ultimately, each bidder may only acquire one of the five leases.

BOEM's response to the comments received on the Proposed Sale Notice is available on BOEM's website for the agency's California activities. The comments on the PSN may be reviewed at regulations.gov, Docket ID BOEM-2022-0017. - Liz Klebaner and Edward Roggenkamp

1020 Jurisdiction: BP America v FERC (5th Cir):

https://www.ca5.uscourts.gov/opinions/pub/16/16-60604-CV0.pdf No. 16-60604 c/w No. 21-60083 FERC brought this enforcement action against BP, alleging the company capitalized on the hurricane-induced chaos in commodities markets by devising a scheme to manipulate the market for natural gas. BP seeks judicial review of FERC's order finding that BP engaged in market manipulation and imposing a $20 million civil penalty. …***Contrary to FERC's position, we hold that the Commission has jurisdiction only over transactions in interstate natural gas directly regulated by the Natural Gas Act (NGA). Specifically, we reject FERC's broader theory that its authority to address market manipulation extends to any natural gas transaction which affects the price of a transaction under the NGA.*** Otherwise, however, we uphold the Commission's order. Nevertheless, because FERC predicated its penalty assessment on its erroneous position that it had jurisdiction over all (and not just some) of BP's transactions, we must remand for reassessment of the penalty in the light of our jurisdictional holding. Thus, we GRANT in part and DENY in part BP's petition for review and REMAND to the agency for reassessment of the penalty.

1020 Transformer Shortage problem for Clean Power Roll-out: Federal agencies have known for a while that the US' reliance on imported high-voltage transformers could stunt grid growth and the problem is now shaping up to be yet another speed bump in the transition to 100% clean power. Research indicates North American utilities procured 1,300 transformers in 2020 and twice as many will be needed in 2027. Only eight companies manufacture transformers domestically, but efforts are underway in Virginia, Alabama and other states to train manufacturing talent and help boost production. E&E News

1020 FERC Cmr. Danly – West Virginia vs EPA "Major Question Doctrine: FCC Cmr. Danly (R) said At a Federalist Society Meeting Wednesday that FERC's effort to overhaul regional grid planning and scrutinize proposed natural gas projects exceeds its statutory authority, leaving the agency vulnerable to lawsuits under the major questions doctrine. The FPA limits FERC to responding to individual complaints and setting specific just and reasonable rates, Danly said. The commission has moved to set new national standards on how to plan regional transmission lines and allocate costs, he said. "I have not seen any text in the Federal Power Act that specifies that we have the responsibility or authority to direct people to conduct transmission planning according to our whim. Absent congressional action on the subject, I think it's also vulnerable potentially to a challenge as being violative of the major questions doctrine." FERC's proposed plan to consider indirect greenhouse gas emissions and a project's impact on climate change flies in the face of the Natural Gas Act, which directs the commission to ensure the orderly development of gas supplies, Danly said. "It's not an environmental statute," he said. "FERC in the last couple of years has layered more and more and more environmental review, repeated questions, inquiries to the project proponents." Pressure from Washington has constrained gas infrastructure that has caused price increases and reliability concerns in New England.

1020 SPR Releases: Senate Energy and Natural Resources ranking member Barrasso (R-WY) blasted Biden's move to drawdown an additional 15 million barrels of oil from the SPR: "The Strategic Petroleum Reserve was built for a national energy crisis – not for a Democrat election crisis."

1020 Machin Permitting Bill: Bloomberg: Democrats and Republicans are far apart on overhauling federal permitting, leaving little common ground if and when lawmakers take another stab at moving Sen. Joe Manchin's (D-W.Va.) stalled bill, observers say. But that disparity may not matter if the bill hitches a ride on a must-pass vehicle such as the fiscal 2023 National Defense Authorization Act or a year-end omnibus spending bill. . . The only part with broad support are standard good-government measures, like an expanded role for the Federal Permitting Improvement Steering Council. Under Manchin's bill, small energy projects, critical mineral development, and other programs would be eligible to apply for FPISC's services, which are voluntary. Under the current rules, FPISC can only work on large projects that carry a price tag of at least $200 million and involve multiple agencies. Strong majorities of Democratic and Republican lawmakers support FPISC because it "forces disclosure and creates more transparency," moving projects through the permitting process faster….Another part of Manchin's bill that could draw broad support is a requirement for the White House to identify at least 25 high-priority energy infrastructure projects for prioritized permitting treatment....Biden on Wednesday also pressed for a permitting overhaul. "Right now, the process of getting clean energy projects approved is too cumbersome and too time consuming," Biden said. "So, I'm asking the Congress: Pass a permitting bill to speed up the approval of all kinds of energy production from wind, to solar, to clean hydrogen. Because we need to get this moving now, quickly—now." For now, most of the other pieces of Manchin's proposal are non-starters with environmentalists and their allies in Congress. .....If Republicans win back both chambers, a permitting overhaul before the 118th Congress is highly unlikely. But when the new Congress is seated, Republicans will want to pursue more aggressive changes to the process, led by Sens. Shelley Moore Capito (R-W.Va.) and John Barrasso (R-Wyo.), along with Reps. Cathy McMorris Rodgers (R-Wash.) and Bruce Westerman (R-Ark.).Capito's permitting bill (S. 4815), introduced last month, goes much further than Manchin's, incorporating ideas such as a rollback of the Biden administration's recent changes to the National Environmental Policy Act rules and a prohibition on the use of the social cost of carbon in cases where it raises gasoline prices.

1020 Permitting: Congress must bridge a deep partisan divide to reach a deal on an energy permitting measure, but passage of such legislation this year is still on the table. The measure could find its way into must-pass legislation, such as the National Defense Authorization Act for fiscal 2023 and an omnibus spending package. Bloomberg Law

1020 FERC - New decision on affiliate status - FERC finds Evergy/Bluescape are affiliates based on board seats, even thought Bluescape doesn't own 10% of Evergy's shares - the traditional measure https://www.utilitydive.com/news/ferc-evergy-bluescape-affiliated-elliott-blackstone-firstenergy/634653/?utm_source=Sailthru&utm_medium=email&utm_campaign=Issue:%202022-10-21%20Utility%20Dive%20Newsletter%20%5Bissue:45443%5D&utm_term=Utility%20Dive

1020 Energy Policy: Politico: President Joe Biden called on oil companies to bring down prices at the pump by boosting production and refining (NOTE - refining plants are working at capacity in most cases – last refinery w/ significant downstream capability came online in 1997 (585,000 b/cd) - there was a small 45K B/cd refinery in Tx that came online in February of this year – odds are low that any new ones will be constructed given current domestic policy to – in the President's words "shut down the fossil fuel industry" – would make it difficult to recover the capital and compliance costs associated with new construction along with the restrictions on new drilling and the increase in royalty rates (aka costs for producing) that must be paid.......though expansions of existing plants remain a possibility-brad) - as he announced the anticipated December release of 15 million barrels of oil from the Strategic Petroleum Reserve (which will maybe help temporarily drop 10-15 cents a gallon – Brad). Additionally, Biden pressed Congress to pass a permitting bill aimed at expediting clean energy project development (this will do nothing for gas/fuel prices and even in the intermediate term – is likely to put increasing pressure on energy prices – brad) i+ncluding projects for wind, solar and clean hydrogen. (**Politico**)

1020 EVs - Tesla Inc. reported revenue of $21.45 billion for the third quarter, short of Wall Street estimates but a record for the company even as it missed its vehicle delivery target this year as expected. CEO Elon Musk affirmed there was excellent demand in the fourth quarter, calling the company "recession resilient" amid investor concerns that a weaker global economy and the high cost of Tesla vehicles would turn off consumers. (**Reuters**)

1020 FERC meeting: Glick warning, 'self-dealing' and pipeline win *Miranda Willson, E&E New* *s*Consumers are going to "suffer" this winter as energy costs continue to climb, the head of the Federal Energy Regulatory Commission said Thursday.

1020 Disconnection Policy: **PUCO (Ohio) issues Special Reconnection Order for heating season | WSYX - ABC 6**

1020 Natural Gas: Global natural gas prices to impact winter home heating bills - WTAE

1020 Wind: BOEM to hold California offshore wind lease sale with 4.5 GW potential in December
How much revenue the Bureau of Ocean Energy Management's unprecedented sale of leases off the Golden State's central and northern coast can generate is an open question given the developing wind turbine technology at issue.

1020 Wind: PPL's Rhode Island utility issues solicitation for up to 1,000 MW of offshore wind
Utility Dive: A Nov. 1 bidders conference is the first step in Rhode Island Energy's procurement, which could supply up to 30% of the Ocean State's electricity in 2030

1020 EVS: GAO Report on Federal Vehicle Fleets: Observations on the Transition to Electric Vehicles GAO-23-105635, October 20

1020 Renewables: PPA prices jump 9.6% in Q3 as growing demand hits supply chain, transmission roadblocks: LevelTen Utility Dive While the Inflation Reduction Act has spurred greater excitement about renewable energy, it has yet to slow a 34% year-over-year increase in power purchase agreement prices, according to LevelTen Energy.

1020 FERC Meeting: 2022-2023 Winter Energy Market and Reliability Assessment Fuel availability "is a primary concern" in the six New England states. Strong demand for LNG is keeping prices high, and the region also faces limited pipeline capacity. Electricity prices are soaring as prices climb for gas, the leading power-plant fuel. New England is facing the most severe gas crunch because pipeline projects have been squashed, forcing the region to rely on shipped imports to keep up with heating needs on the coldest days. New England's reliance on LNG imports during the winter is just "not sustainable," Glick said. But the fuel shortages that may affect the Northeast won't affect other regions. Power grids across the US are expected to have enough generating capacity to meet demand this winter, Much of the US will experience winter weather that's warmer than average, thanks to the La Nina atmospheric phenomenon, which is returning for the third consecutive winter, the National Weather Service said Thursday.

1020 FERC Meeting: FERC approved a natural gas project - the Henderson County Expansion Project - in Kentucky and Indiana that will allow a coal plant to switch to natural gas—one of six gas projects the commission addressed at its monthly meeting Thursday. FERC approved the Texas Gas project after the EPA's comments in the docket were "considerably more limited than those on other projects," ClearView Energy Partners, an independent research firm in Washington, pointed out in a note this week. The EPA limited its criticism of FERC's greenhouse gas emissions analysis when the EPA had previously criticized FERC for a similar coal-to-gas repowering project as flawed and having the potential to "lock in" fossil fuel emissions, ClearView noted. FERC's other gas orders allowed gas projects to proceed. FERC rejected a request for rehearing in the commission's April order approving Kinder Morgan's East 300 Upgrade Project in the Mid-Atlantic, a modification allowing the previously approved Golden Pass liquefied natural gas terminal in Texas to relocate a piece of equipment…. . The commission disclaimed jurisdiction over Limetree Bay LNG's planned ship-to-ship operations in the

1020 Renewables – Advocacy Group – Clean Energy Group Releases a white paper: Resilient Solar and Battery Storage for Cooling Centers: Mitigating the Impacts of Extreme Heat on Vulnerable Populations, prepared by Clean Energy Group (CEG) with American Microgrid Solutions (AMS), examines the opportunity for resilient solar+storage to provide reliable backup power to cooling centers **READ THE REPORT HERE** ***Upcoming Webinar***: On Wednesday, November 16th at 1pm ET, report author Marriele Mango will present the report findings. She will be joined by Nate Mills from American Microgrid Solutions, and Nicole Lim from the California Indian Museum and Cultural Center, which is in the process of developing a resilient solar+storage installation to support cooling center operations. Register here.

1019 Coaltrain Settles with FERC, $4 Million in Disgorgement with No Civil Penalty – Willkie Farr & Gallagher LLP - On October 11, 2022, the Federal Energy Regulatory Commission ("FERC") approved a Stipulation and Consent Agreement ("Consent Agreement") between the Office of Enforcement and Coaltrain Energy, L.P. ("Coaltrain"), resolving a federal lawsuit and FERC's claims alleging that Coaltrain and a group of individually named Coaltrain employees violated section 222 of the Federal Power Act ("FPA") and the Commission's Anti-Manipulation Rule, 18 C.F.R. 1c.2.[1] FERC also alleged that Coaltrain violated 18 C.F.R. 35.41(b), by making false and misleading statements to Staff during the investigation.[2] Coaltrain settled the claims by agreeing to pay disgorgement in the amount of $4,000,000 to PJM Interconnection, LLC ("PJM"), a very substantial discount from the originally assessed $38,000,000 in civil penalties and approximately $4,000,000 in disgorgement.[3] Coaltrain stipulated to the facts set forth in Section II of the Consent Agreement, but neither admitted nor denied the alleged violations set forth in Section III. The Consent Agreement resolved all claims against both Coaltrain and the individual Defendants.

Factual and Procedural Background

During the summer of 2010, Coaltrain entered into Up To Congestion ("UTC") trades in the PJM market.[4] After a five-year investigation into Coaltrain's summer 2010 UTC-trading activity, FERC issued an Order to Show Cause to Coaltrain and the five individual Defendants named in the action.[5] FERC then assessed civil penalties of $26,000,000 against Coaltrain (jointly and severally with Defendants Peter Jones and Shawn Sheehan); $5,000,000 against P. Jones; $5,000,000 against Sheehan; $1,000,000 against Robert Jones; $500,000 against Jeff Miller; and $500,000 against Jack Wells, with an additional $4,121,894 in disgorgement to be paid, jointly and severally, by Coaltrain, P. Jones, and Sheehan.[6] In the Order Assessing Civil Penalties, FERC found that Coaltrain and the individual Defendants engaged in market manipulation, through fraudulent UTC transactions meant to result in excessive Marginal Loss Surplus Allocation payments, as well as violations of FERC's market behavior rules by making false and misleading statements and material omissions during the course of the investigation.[7]

Section 31(d) of the FPA outlines two procedural pathways for a respondent to challenge FERC's imposition of civil penalties for violations of the FPA's anti-manipulation provisions. A respondent may either: (1) have FERC's allegations adjudicated before an Administrative Law Judge; or (2) require FERC to "promptly" assess civil penalties and, in the event the civil penalty is not paid, file a complaint seeking de novo review in federal district court. Coaltrain and the individuals, like most other respondents, chose the de novo review option, resulting in the assessment of the civil penalties previously described and the subsequent filing of a complaint by FERC in the Southern District of Ohio seeking an order affirming the penalty assessment.[8]

In the more than six years since the complaint's filing, the litigation has taken numerous turns, including a rejected motion to dismiss, and most notably, a consequential ruling by the district court that it lacked jurisdiction to review the penalties related to joint and several liability and disgorgement.[9] In the 2021 Order, the court noted that the litigation was brought pursuant to FPA section 31(d) procedures, which, in the court's reading of the statute, address only the enforcement of civil penalty assessments, and not the imposition of other remedies such as joint and several liability or disgorgement. The court noted that FERC's authority to assess non-civil penalties stems from the broad "necessary and appropriate" authority found in section 309 of the FPA, and that orders arising under this authority may only be reviewed by federal courts of appeals, not district courts.[10] Consequently, the court held that the joint and several liability and disgorgement remedies were outside the scope of FPA section 31(d), and were therefore unreviewable by a district court.[11] As a practical matter, this meant that the court lacked the authority to impose such remedies. On March 3, 2022, the court rejected FERC's motion to have the 2021 Order certified for interlocutory appeal.[12] This significant blow to FERC's case may have been a factor encouraging it to pursue judicial mediation with Coaltrain rather than to press on with a trial.

In the Settlement Agreement, Coaltrain only stipulated to the facts contained in Section II of the Consent Agreement, describing the procedural history of the matter. It did not stipulate to the facts in Section III, which described the alleged violations. The Consent Agreement excludes many of the penalties set forth in the initial civil penalty assessment, and instead imposes just a $4,000,000 disgorgement to be paid to PJM by Coaltrain, a sharp contrast to the "disgorgement totaling $4,121,894 and penalties totaling $38 million relating to these determinations" that were originally assessed by FERC.[13]

Conclusion

After six years of litigation in federal court, FERC settled the matter for a fraction of what it originally sought. One takeaway is that de novo review in federal court is a very lengthy and uncertain process. Another takeaway is that if a defendant has the resources and the will, forcing FERC to litigate the matter in district court may be worthwhile. Ultimately, the decision of whether to litigate or to settle belongs to the client, and Coaltrain provides another data point to be considered in making that decision. There is no guarantee that going to federal court will result in a favorable outcome, but the defendant will be in front of an impartial adjudicator who likely will subject FERC's legal theories and factual assertions to careful and exacting scrutiny. To view all formatting for this article (eg, tables, footnotes), please access the original here. Willkie Farr & Gallagher LLP - Paul J. Pantano Jr. and Matthew Goldberg

1019 **Wind: The Interior Department has scheduled an offshore wind lease sale for Dec. 6 in the Pacific Ocean, marking the first U.S. auction in the region** and the first for commercial-scale floating offshore wind energy development. The five wind leasing areas span roughly 583 square miles off the coast of central and northern California. (Axios)

1019 **SPR Drawdowns: President Joe Biden on Wednesday announced the sale of 15 million barrels of Strategic Petroleum Reserve crude oil, wrapping up a 180-million-barrel SPR**

release program approved in March, and said additional SPR barrels could be offered in the coming months to keep energy prices in check. American Petroleum Institute President and CEO Mike Sommers partly blamed "faulty policy decisions" for the rise in fuel prices and urged caution "in continuing to rely on short-term efforts that are no substitute for sound long-term policies that enable American energy leadership." S&P Global

1019 SPR Drawdowns: President expected to announce today the sale of 15 million barrels of oil from the Strategic Petroleum Reserve in December, part of an 180-million-barrel release that began earlier this year, in the latest effort from the administration to lower domestic gasoline prices ahead of the midterm elections. (**E&E News**)

1019 Transmission: An $850 million investment in transmission line projects built, owned and operated by Michigan Electric Transmission "could" generate economic benefits exceeding $6 billion and more than 4,000 jobs by the end of the decade. "Looking around the country and seeing preventable events such as what's occurring in California or the unfortunate events in Texas with winter storm Uri, Michigan must be proactive to ensure that we have the tools in our toolbox to allow for the needed investments to be made in our energy infrastructure to ensure system reliability and resiliency," state Sen. Wayne Schmidt says. DBusiness Magazine (Detroit)

1019 Natural Gas: EIA expects Shale gas output to grow by 0.6 Bcf/d to a record 95.1 Bcf/d, driven by gains in Appalachia, the Permian and the Haynesville Shale oil production from the biggest US shale regions Reuters

1019 Gas Prices: As GOP deploys gas price attacks, Dems have few answers *E&E News* As debate season winds down, Republican congressional candidates are showing no sign of letting up on their Democratic opponents on high gasoline prices. Democrats are employing several strategies to deflect blame.

1019 Interconnection: A proposed rule from the Federal Energy Regulatory Commission would have transmission providers take a "first-ready, first-served" approach to interconnection requests and pay penalties for missing deadlines on interconnection studies. The Edison Electric Institute is concerned about the conditional nature of withdrawal penalties, and American Electric Power says a lack of engineers renders an increase in obligatory studies infeasible. S&P Global

1019 Gas Prices: Will the energy crisis crush European industry? *Peggy Hollinger et al., Financial Times* While companies are digging in for a long winter, executives and politicians fear a wave of deindustrialisation.

1019 Gas Prices: LNG Freight Rates Hit $450,000 a Day as Russia Disrupts Fuel Supplies *Costas Paris, The Wall Street Journal* Ships carrying liquefied natural gas command record prices as Asia and Europe propel demand.

1019 Jet Fuel: Grant From Bill Gates-led Fund Will ["may"] Make Green Jet Fuel As Cheap As Fossil Fuels *Akshat Rathi, Bloomberg* A $50 million grant will allow LanzaJet to build first-of-a-kind plant and sell sustainable aviation fuel at affordable prices.

1019 Renewables: Global CO2 emissions to grow less than 1% this year thanks to renewables- IEA *Nina Chestney, Reuters* Global carbon dioxide emissions from burning fossil fuels are expected to rise by just under 1% this year, as the expansion of renewables and electric vehicles outweighed coal demand, the International Energy Agency (IEA) said.

1019 Energy Efficiency: Most, least energy-efficient states named in WalletHub analysis *Robert Walton, Utility Dive* Massachusetts is the most energy efficient state and South

Carolina is the least, according to new data analysis from WalletHub.

1019 Transmission: **NRDC Report claims: More interregional transmission could prevent East Coast blackouts, lower costs: NRDC report** *Ethan Howland, Utility Dive* Increased transmission prevented about 2 million customers from Boston to Washington, D.C., from losing power during a simulated Polar Vortex in February 2035, saving $1 billion, according to modeling conducted by GE Energy for the environmental group.

1019 Energy Efficiency: **Public Utility Commission of Texas hosts energy efficiency implementation meeting | KVUE & Texas energy companies, leaders look to improve energy efficiency programs | kvue.com**

1019 E&C R's: Biden Drained SPR by 40 Percent in Less Than Two Years - *He's Depleted the SPR More Than Every President* Since day one in office, President Biden has waged war on American fossil energy. This has led to 40-year high inflation and made everyday life more expensive for people across the board—from the gas pump to the grocery store. To cover up his failed "rush-to-green" agenda, President Biden is depleting our Strategic Petroleum Reserve (SPR). He has sold off more than 200 million barrels—nearly 40 percent of the stockpile—while in office. This is more than all the U.S. presidents **in history combined.**

As a result, the SPR is now at its lowest level since 1984 – and the administration has no plan to refill it. This morning, his administration announced an additional 15 million barrels would be drained from the SPR to bailout Democrats ahead of the midterms, further surrendering both our energy security and national security to countries like Russia, China, Saudi Arabia, and Venezuela.

BOTTOM LINE: President Biden is depleting our strategic reserves at a record rate. We're going to run dangerously low—and be unprepared for a true emergency—if his reckless actions continue.

If President Biden was serious about lowering prices across the board—and not just interested in an election year gimmick—he would work with Republicans on solutions to flip the switch for more American energy production.

House Republicans on Energy and Commerce have sounded the alarm for months on the administration's misuse of the Strategic Petroleum Reserves, including introducing legislation to reverse course on Biden's energy crisis. House Democrats have blocked EVERY SINGLE BILL. **Here's the proof:**

In **November 2021**, after President Biden released 50 million barrels of crude from the Strategic Petroleum Reserves, E&C Republicans **urged** Biden to work with American energy producers to boost production here – not beg OPEC to pump more oil or coordinate with China on releasing strategic reserves.

In **December 2021**, E&C Republican Leader Cathy McMorris Rodgers introduced a bill to require the Secretary of Energy to develop a plan to increase oil and gas production on Federal lands if the president uses our country's SPR for non-emergency reasons. **Democrats blocked it** – doubling down on high gas prices and President Biden's energy crisis.

In **February 2022,** Republican Leaders Cathy McMorris Rodgers and Bruce Westerman **introduced** the American Independence from Russia Act which flips the switch to unleash American energy production. It immediately approves the Keystone XL pipeline, removes all restrictions on U.S. LNG exports, restarts oil and gas leasing on our federal lands and offshore waters, and requires DOE to make a plan to replace drawn down oil from the SPR.

To date, House Democrats have **BLOCKED** the American Energy Independence from Russia Act **SIX TIMES.**

In **June 2022**, E&C Republican Leaders Leader Cathy McMorris Rodgers and Fred Upton sent a letter to Secretary Granholm **demanding answers** for how the administration "is rapidly depleting the nation's petroleum reserves ahead of elections in November, while failing to establish long-term plans" to replenish the reserves.

We received **no reply** from Secretary Granholm.

In **July 2022**, House Republicans **demanded answers** from the administration as to why our emergency energy reserves were being sent to foreign adversaries like the Chinese Communist Party, compromising our energy security and national security

Also in **July 2022**, Democrats **blocked** E&C Republican Leader Cathy McMorris Rodgers' amendment, **introduced by Rep. Jeff Duncan**, to stop the Biden administration from selling our strategic energy reserves to China. Democrats would rather send our reserves to communist dictatorships than keep America powered during emergencies.

In **September 2022**, E&C Republicans led a resolution of inquiry to hold the Biden administration for draining our SPR, jeopardizing our national security and energy security. E&C Democrats **BLOCKED** our efforts to hold the Biden administration accountable.

Today, E&C Republican Leader Cathy McMorris Rodgers **called out** the Biden administration's plans to further drain our strategic reserves. Key excerpt: "Instead of using the SPR for political bailout and empowering America's adversaries, President Biden should end his war on American energy and join Republican efforts to reclaim our energy dominance." **Go here for the tweets cited in the release**

1019 LNG: Feedgas deliveries to US liquefied natural gas facilities climbed to an average of about 11.21 Bcf/d in the past week, with Cheniere Energy's Sabine Pass in Louisiana taking a record 5.18 Bcf/d on Tuesday, per S&P Global Commodity Insights data. Meanwhile, the Freeport LNG plant in Texas was moving closer to restart after a months-long outage, while Cove Point Liquefaction in Maryland is expected to complete its scheduled maintenance around Nov. 1. S&P Global

1019 Fuel: EIA reports US crude and gasoline stockpiles dropped by 1.7 million barrels and 114,000 barrels, respectively, last week, while distillate supplies edged up by 124,000 barrels. US refineries operated at 89.5% of capacity last week, down 0.4 percentage points from the week prior. MarketWatch (tiered subscription model)/Dow Jones Newswires

1019 LNG: PHMSA said it must approve all work done at the TX Freeport LNG Plant before it can restart production (after a June fire shut down the plant. Plant projected to be at 85% production in November and full production by March. **:** Reuters

1018 FERC AGENDA: Summary of FERC Meeting Agenda for October 2022 Read Online: **White & Case LLP** B**elow are summaries of the agenda items for the Federal Energy Regulatory Commission's October 20, 2022 open meeting, pursuant to the sunshine notice released on October 13, 2022.**

Electric

E-1 – New York Independent System Operator, Inc. (Docket No. ER21-2460-002). In Order No. 2222, the Commission required each Regional Transmission Organization (RTO) and Independent System Operator (ISO) to amend its tariffs to ensure that any Distributed Energy Resource (DER) that is technically capable of providing wholesale services through aggregation is eligible to do so. On July 19, 2021, the New York Independent System Operator, Inc. (NYISO) filed its first compliance filing for Order No. 2222. NYISO proposed to limit the ancillary services that a heterogeneous aggregation can provide to the services that the "least capable" resource in the aggregation is technically capable of providing. On June 17, 2022, the Commission rejected NYISO's proposal as unreasonable, finding it did not comply with Order No. 2222 (June 17 Order). The Commission found that "so long as some of the DERs in the Aggregation can satisfy the relevant requirements to provide certain ancillary services (e.g., the one-hour sustainability requirement) . . . those DERs should be able to provide those ancillary services through aggregation, in accordance with the goal of Order No. 2222 to allow [DERs] to provide all services that they are technically capable of providing through aggregation." On July 18, 2022, NYISO filed Request for Clarification or, in the Alternative, Rehearing of the June 17 Order. On that same day Natural Resources Defense Council, Sustainable FERC Project, and Advanced Energy Economy (collectively, Clean Energy Advocates) filed a Request for Rehearing of the June 17 order arguing that Commission did not find a reasoned basis for determining NYISO's proposed DER definition complies with Order No. 2222. On August 5, 2022, the Clean Energy Advocates filed an Answer to NYISO's July 18 Request for Clarification or, in the Alternative, Rehearing. The Clean Energy Advocates argued NYISO improperly was seeking approval of a new proposal that it did not propose in the underlying proceeding. On August 18, 2022, the Commission filed a Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration. Agenda item E-1 may be an order on NYISO Request for Clarification, or in the alternative, Rehearing and the Clean Energy Advocate's Request for Rehearing.

E-2 – California Independent System Operator Corporation (Docket No. ER21-2455-002). In Order No. 2222, the Commission required each RTO and ISO to amend its tariffs to ensure that any Distributed Energy Resource (DER) that is technically capable of providing wholesale services through aggregation is eligible to do so. On July 18, 2021, the California Independent System Operator Corporation (CAISO) submitted its first compliance filing for Order No. 2222. On June 17, 2022, the Commission approved and rejected in part CAISO's compliance filing, requesting CAISO submit a further compliance filing addressing the remaining barriers to participation for DERs in wholesale markets through aggregation (June 17 Order). On July 15, 2022, Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company (collectively, the California Utilities) requested clarification of the June 17 Order. Specifically, the California Utilities argued that the Commission should clarify Paragraph 110 of the June 17 Order to reinforce important jurisdictional rulings that it has made in the past, particularly in Sun Edison LLC, 129 FERC 61,146 (2009) and Cal. Pub. Utils. Comm'n, 133 FERC 61,059 (2010). Because the jurisdictional holdings in these two cases have not been explicitly modified or reversed, the California Utilities seek clarification to determine if Paragraph 110 resulted in any change in Commission jurisdiction that merits rehearing. On July 18, 2022, Advanced Energy Economy (AEE) submitted a request for rehearing of the June 17 Order arguing that the Commission violated the FPA by approving portions of the CAISO Order No. 2222 compliance filing. On

August 18, 2022, the Commission filed a Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration. Agenda item E-2 may be an order on the California Utilities' and AEE's Requests for Rehearing.

E-3 – Southwest Power Pool, Inc. (Docket No. ER22-1719-001). On April 29, 2022, Southwest Power Pool, Inc. (SPP) submitted revisions to the SPP Open Access Transmission Tariff (Tariff) to establish a process for the development of consistent Zonal Planning Criteria to be applied comparably to all Transmission Owners within each Zone (Zonal Planning Criteria Process). The Tariff revisions were based on the previous proposed revisions filed with the Commission to establish a process for developing uniform local transmission planning criteria (Original Zonal Planning Criteria Process), but were changed, with input from numerous SPP stakeholders, to address the previous rejection of the Original Zonal Planning Criteria Process by the Commission in 2020. On June 28, 2022, the Commission issued an order accepting the SPP 2022 Zonal Planning Criteria Process Filing to establish an annual process, known as the Zonal Planning Criteria Process, for each transmission pricing zone to develop a single set of uniform planning criteria, called Zonal Planning Criteria (June 28 Order). On July 22, 2022, Indicated SPP Transmission Owners (ITOs) filed a Request for Rehearing, Alternative Requests for Clarification, and Request for Expedited Action of the June 28 Order. On July 27, 2022, Oklahoma Gas and Electric Company (OGE) filed a Request for Hearing and on July 28, 2022 GridLiance High Plains, LLC (GHP) filed a Request for Rehearing or, in the Alternative, Clarification of the June 28 Order. On August 12, 2022, SPP filed Motion for Leave to Answer and Answer to the various rehearing requests that were filed. On August 22, 2022 a collective of joint commenters filed an Answer in Support of the SPP's August 12th Motion for Leave to Answer and Answer. On August 26, 2022 OGE filed a Motion for Leave to Answer and Answer to SPP's August 12th Motion for Leave to Answer and Answer. On August 29, 2022, the Commission filed a Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration. Agenda item E-3 may be an order on the Requests for Rehearing of the June 28 Order approving the SPP 2022 Zonal Criteria Planning Process.

E-4 – City and County of San Francisco v. Pacific Gas and Electric Company; Pacific Gas and Electric Company (Docket Nos. EL15-3-004, ER15-704-026). On November 21, 2019, the Commission issued Opinion No. 568, which affirmed in part and overturned in part, an its initial decision in City and Cnty. of San Francisco v. Pac. Gas & Elec. Co., 157 FERC 63,021 (2016) which deals with issues surrounding the grandfathering of San Francisco's customers to receive wholesale distribution service under Pacific Gas & Electric's (PG&E) wholesale distribution tariff. On December 20, 2019, the City and County of San Francisco (San Francisco) filed a request for rehearing of Opinion No. 568, which on June 4, 2020 the Commission denied in part and granted in part. On August 5, 2020, San Francisco filed notice that it was seeking review of Opinion No. 568 and the June 4th Rehearing Order on the grounds that they are arbitrary, capricious, and an abuse of discretion within the meaning of the Administrative Procedure Act, 5 U.S.C. §§ 701–706; violate federal law, including the Federal Power Act; and are otherwise contrary to law. Docket No. ER15-704-25 includes the compliance filing service agreements between PG&E and San Francisco. Both sub-dockets in Item E-4 have not been populated. Agenda item E-4 may be an order with respect to the Commission's decision in Order No. 568.

E-5 – Evergy Kansas Central, Inc.; Evergy Metro, Inc.; Evergy Missouri West, Inc.

(Docket Nos. ER20-67-001; ER20-116-001; ER20-113-001). On September 28, 2020, Evergy Kansas Central, Inc., Evergy Metro, Inc., and Evergy Missouri West, Inc. (collectively Evergy MBR Sellers) filed a notice of change in status regarding changes to Evergy MBR Sellers' upstream ownership. On May 10, 2021, the Commission issued a deficiency letter requesting more information on Evergy MBR Sellers' upstream ownership. The Evergy MBR Sellers' filed a response to the May 10, 2021 deficiency letter on May 28, 2021. On September 22, 2021, the Commission issued an additional deficiency letter requesting additional information regarding the business activities of all and upstream owners and all affiliates of the Evergy MBR Sellers. The Evergy MBR Sellers submitted a response to the September 22, 2021 deficiency letter on October 22, 2021. On November 12, 2021, Public Citizen, Inc. and the Communications Workers of America filed a Joint Protest. Agenda item E-5 may be an order on the Evergy MBR Seller's original September 28, 2020 change in status filing with respect to its October 22, 2021 deficiency letter response.

E-6 – TransAlta Energy Marketing (U.S.) Inc.,; TransAlta Energy Marketing Corp., TransAlta; Centralia Generation LLC, TransAlta Wyoming; Wind LLC, Lakeswind Power Partners, LLC, Big; Level Wind LLC, Eagle Canada Common Holdings LP, and BIF IV Eagle NR Carry LP. (Docket No. EC22-45-000). On February 28, 2022, TransAlta Energy Marketing (U.S.) Inc.; TransAlta Energy Marketing Corp.; TransAlta Centralia Generation LLC; TransAlta Wyoming Wind LLC; Lakeswind Power Partners, LLC; and Big Level Wind LLC (collectively, the TransAlta Companies), together with Eagle Canada Common Holdings LP and BIF IV Eagle NR Carry LP, filed an application (203 Application) under section 203 of the Federal Power Act (FPA) requesting authorization for a change in control over the TransAlta Companies that may occur upon the termination of certain standstill provisions in a 2019 debt securities agreement between TransAlta Corporation and Brookfield BRP Holdings (Canada) Inc., an affiliate of Brookfield Asset Management Inc. On August 25, 2022, the Commission issued an In the absence of Commission action within 180 days, the Application would be deemed granted Order Tolling Time for Action on Application under FPA Section 203 because in the absence of Commission action within 180 days the 203 Application would be deemed granted. The Commission tolled its decision until February 22, 2023. Agenda item E-6 may be an order on the TransAlta Companies' 203 Application.

E-7 – Midcontinent Independent System Operator, Inc. (Docket Nos. ER19-776-001, ER19-809-001). On January 7, 2019, pursuant to section 205 of the FPA, Midcontinent Independent System Operator, Inc. (MISO) filed revisions to MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff) to add City of Henderson, Kentucky, Utility Commission, d/b/a HMPL Municipal Power & Light (HMPL) as a Transmission Owning member of MISO. Relatedly on January 28, 2019, MISO, on behalf of HMPL, filed an unexecuted Joint Pricing Zone Revenue Allocation Agreement (JPZA) to include certain HPML 69 kV and 161 kV facilities into the MISO pricing zone. Big Rivers Electric Corporation (BREC) submitted protests to both filings. On March 8, 2019, the Commission issued an order consolidating the two proceedings, accepting for filing the JPZA effective February 1, 2019, subject to refund, and establishing hearing and settlement proceedings. Following termination of settlement judge procedures, the matter was set for trial-type hearing procedures before a presiding administrative law judge (ALJ). By motion granted by the presiding ALJ on July 13, 2020, the proceeding was converted to a paper hearing. On January 19, 2021, the presiding ALJ issued an Initial Decision finding that HMPL facilities should be included in the MISO pricing zone and the unexecuted JPZA to be just and reasonable and should be approved by the Commission. Briefs on exception to the Commission on the Initial Decision were filed on February 18, 2021, by BREC and on March 10, 2021, by HMPL, Commission trial staff, and MISO. Agenda item E-7 may be an order on the presiding ALJ's January 19 Initial Decision on the HMPL facilities, the unexecuted JPZA, and related MISO Tariff revisions.

E-8 – Avangrid Renewables, LLC (Docket No. ER21-2464-000). On July 19, 2021, Avangrid Renewables, LLC (Avangrid), in accordance with the Commission's June 17, 2021 order providing guidance on cost justification filings pending before the Commission, submitted a filing to justify certain spot market sales at prices exceeding the WECC $1,000/MWh "Soft" Cap. On August 6, 2021, Southern California Edison Company and Pacific Gas and Electric Company filed a joint protest of Avangrid's July 19 cost justification filing. On August 9, 2021, the Department of Market Monitoring of the California Independent System Operator Corporation (CAISO DMM) filed comments in response as well. Avangrid filed a motion for leave and answer to the joint protest and CAISO DMM comments on August 23, 2021. Agenda item E-8 may be an order relating to Avangrid's July 19 cost justification filing.

E-9 – Black Hills Power, Inc. (Docket No. ER21-2443-000). On July 16, 2021, Black Hills Power, Inc. (Black Hills Power), in accordance with the Commission's June 17, 2021 order providing guidance on cost justification filings pending before the Commission, submitted a filing to justify certain spot market sales made at prices exceeding the WECC $1,000/MWh "Soft" Cap. On August 6, 2021, Southern California Edison Company and Pacific Gas and Electric Company filed a joint protest of Black Hills Power's July 16 cost justification filing. On August 9, 2021, the CAISO DMM filed comments in the docket as well. Black Hills Power filed motions for leave and answers to the joint protest and CAISO DMM comments on August 20, 2021. Agenda item E-9 may be an order relating to Black Hills Power's July 16 cost justification filing.

E-10 – Exelon Generation Company, LLC (Docket Nos. ER21-43-000, ER21-43-001, ER21-43-002, ER21-2453-000). On July 19, 2021, Exelon Generation Company, LLC (Exelon), in accordance with the Commission's June 17, 2021 order providing guidance on cost justification filings pending before the Commission, submitted a filing to justify certain spot market sales made at prices exceeding the WECC $1,000/MWh "Soft" Cap. On August 6, 2021, Southern California Edison Company and Pacific Gas and Electric Company filed a joint protest of Exelon's July 19 cost justification filing. On August 9, 2021, the CAISO DMM filed comments in the docket as well. Agenda item E-10 may be an order relating to Exelon's July 19 cost justification filing.

E-11 – Brookfield Renewable Trading and Marketing LP (Docket No. ER21-59-002). On May 20, 2022, the Commission issued an order addressing 13 market-based bilateral wholesale spot power contracts that were executed by Brookfield Renewable Trading and Marketing LP (BRTM) in August of 2020. The contracts had been the subject of a prior sub-docket and were executed at prices or above the established soft price cap of $1,000/MWh previously created by the Commission for the Western Electricity Coordinating Council (WECC) region. In the order, however, the Commission found that the contracts could not be deemed just and reasonable under section 205(a) of the FPA. The Commission stated that the spot market sale prices above the soft cap, during a period of extreme weather caused by a heat wave in August of 2020, did not comport with the FPA and, accordingly, directed

BRTM to issue refunds on a portion of the contracts. On June 21, 2022, BRTM filed a request for rehearing of the May 20 order, asserting that the Commission committed a legal error, as the Commission does not have the authority under the Mobile-Sierra presumption to modify a wholesale electricity contract, previously agreed to in good faith, unless the contract demonstrably harmed the public interest. On June 21, 2022, the California Public Utilities Commission (CPUC) filed a request for rehearing of the May 20 order, stating that BRTM had justified making the spot market sales at the average index price but did not sufficiently justified the premiums added to the index price. Agenda item E-11 may be an order on the respective requests for rehearing of the May 20 order.

E-12 – Macquarie Energy LLC (Docket No. ER21-64-001). On May 20, 2022, the Commission issued an order addressing 17 market-based bilateral wholesale spot power contracts that were executed by Macquarie Energy LLC (Macquarie) in August of 2020. The contracts had been the subject of a prior sub-docket and were executed at prices or above the established soft price cap of $1,000/MWh previously created by the Commission for the Western Electricity Coordinating Council (WECC) region. In the order, however, the Commission found that only eight of the 17 contracts could be deemed just and reasonable under section 205(a) of the FPA. The Commission stated that the spot market sale prices above the soft cap, during a period of extreme weather caused by a heat wave in August of 2020, did not comport with the FPA and, accordingly, directed Macquarie to issue refunds on a portion of the rate for nine of the contracts. On June 17, 2022, Macquarie filed a request for rehearing of the May 20 order, asserting that the Commission committed a legal error, as the Commission does not have the authority under the Mobile-Sierra presumption to modify a wholesale electricity contract, previously agreed to in good faith, unless the contract demonstrably harmed the public interest. On June 21, 2022, CPUC filed a request for rehearing of the May 20 order, stating that Macquarie had justified making the spot market sales at the average index price but did not sufficiently justified the premiums added to the index price. Agenda item E-12 may be an order on the respective requests for rehearing of the May 20 order.

E-13 – Tri-State Generation and Transmission Association, Inc. (Docket No. ER21-65-002). On May 20, 2022, the Commission issued an order addressing two-day ahead transactions for real-time energy sales between Tri-State Generation and Transmission Association, Inc. (Tri-State) and Salt River Project Agricultural Improvement and Power District (Salt River) in August of 2020. The contracts had been the subject of a prior sub-docket and were executed at prices or above the established soft price cap of $1,000/MWh previously created by the Commission for the WECC region. In the order, however, the Commission found that Tri-State justified the spot market sales at the relevant average index price and could be deemed just and reasonable under section 205(a) of the FPA, but the premiums added to the index price were not. The Commission stated that the spot market sale prices above the soft cap, during a period of extreme weather caused by a heat wave in August of 2020, did not comport with the FPA and, accordingly, directed Tri-State to issue refunds. On June 29, 2022, the Western Power Trading Forum (WPTF) and the Electric Power Supply Association (EPSA) filed a request for rehearing of the May 20 order, stating that the Commission had overstepped its jurisdiction under the Mobile-Sierra doctrine. Additionally, the request for rehearing asks that the Commission harmonize the WECC soft offer cap with the adjoining region in CAISO pursuant to Order No. 831, in order to enable higher bids (up to $2,000/MWh) for interrelated markets, particularly during instances of extreme demand constraints. Agenda item E-13 may be an order on the request for rehearing of the May 20 order.

E-14 – Pegasus Wind, LLC (Docket No. ER22-728-001). On December 27, 2021, Pegasus Wind, LLC (Pegasus) submitted a rate schedule for Reactive Supply and Voltage Control from Generation Sources Service (Rate Schedule) to be included in the Midcontinent Independent System Operator, Inc. (MISO) open access transmission tariff. Specifically, the Rate Schedule furnished the revenue requirement for the Reactive Supply Service from the Pegasus Wind Facility. On February 23, 2022, the Commission issued an order accepting the Rate Schedule for filing and suspended it for a nominal period, subject to refund. The Commission also set the filing for hearing and settlement judge procedures and appointed a settlement judge on March 14, 2022. The parties engaged in settlement discussions thereafter, and on August 11, 2022, Pegasus submitted an Offer of Settlement and Settlement Agreement, purporting to resolve all outstanding issues in the proceeding. On September 14, 2022, the Commission issued a Certification of Uncontested Offer of Settlement, and, on September 29, 2022, the chief judge issued an order terminating the settlement procedures. Agenda item E-14 may be an order on the Offer of Settlement and Settlement Agreement.

E-15 – Blue Ridge Power Agency (Docket No. EL21-97-000). On August 10, 2021, Blue Ridge Power Agency (Blue Ridge) submitted a Petition for Declaratory Order in order to terminate a controversy or remove uncertainty arising under four wholesale power supply agreements. Each of the agreements—pursuant to sections 201, 205, and 206 of the FPA—is an Agreement for Full Requirements Electric Service between an individual member (as customer) and American Electric Power Service Corporation, serving as agent for Appalachian Power Company (APCo) and conducting the agreements under the APCo market-based wholesale rate tariff. According to Blue Ridge, the Petition requests that the Commission grant members the ability to utilize battery-based energy storage technology for load management purposes under the provisions of the aforementioned agreements. On September 20, 2021, APCo filed a Protest and Motion to Dismiss, asserting that the usage of battery storage would undermine the express contractual provisions actively sought and obtained by the members in Blue Ridge. Additionally, APCo stated that Blue Ridge, nor any of its members, has procured or constructed any storage facilities, rendering the request to be speculative and moot from an operational perspective. Agenda item E-15 may be an order on the Petition for Declaratory Order.

Gas

G-1 – Panhandle Eastern Pipe Line Company, LP (Docket Nos. RP19-78-000, RP19-78-001, RP19-1523-000); Southwest Gas Storage Company (Docket No. RP19-257-005). On October 11, 2018, Panhandle Eastern Pipeline Line Company (Panhandle) submitted its FERC Form No. 501-G in accordance with Order No. 849 following the enactment of the reduction in federal corporate income tax rates in December of 2017. On November 8, 2018, Southwest Gas Storage Company (Southwest Gas), an affiliate of Panhandle, submitted its respective FERC Form 501-G. By order dated January 16, 2019, the Commission instituted a proceeding under section 5 of the Natural Gas Act (NGA) to investigate whether the rates currently charged by Panhandle are just and reasonable, stating that that Panhandle may be "substantially over-recovering its cost of service." On February 19, 2019, the Commission issued an NGA section 5 rate review into the existing rates of Southwest Gas. Relatedly, Panhandle filed a NGA section 4 general rate case in Docket No. RP 19-1523-000. On July 22, 2019, the Commission set both matters for hearing and settlement proceedings and assigned a chief judge. On August 19, 2019, Panhandle filed revised Tariff records pursuant to NGA section 4, seeking to increase its rates effective October 1, 2019. In September of 2019, the Commission issued an order accepting and suspending, subject to refund, the NGA section 4 rate revisions. On October 1, 2019, the chief judge consolidated all of the proceedings in the above-captioned dockets and designated a settlement judge. In the ensuing months, multiple technical conferences among the parties were convened and comments were filed responsive to issues raised during the technical conferences or discovery. On April 15, 2020, Panhandle filed a motion to terminate the NGA section 5 proceeding, asserting such termination is appropriate due to the March 1, 2020 effectiveness of the rates filed by Panhandle in its NGA section 4 general rate case. On June 18, 2020, the Commission issued an order denying the request for dismissal. On August 7, 2020, the parties filed respective pre-hearing briefs. The evidentiary hearing was conducted from August 25, 2020 through September 16, 2020. On March 26, 2021, the presiding administrative law judge (ALJ) issued the Initial Decision (ID) on the consolidated proceedings, principally finding that certain revisions to the Tariff rates are just and reasonable. In particular, the ALJ concurred with the proposed treatment of accumulated deferred income taxes (ADIT) by Panhandle and excess ADIT balances and the proposal to include a terminal decommission rate (but did not assent to the rate itself). Notably, the ALJ rejected the proposed return on equity (ROE) of 14.67 percent and calculated an alternative ROE of 11.43 percent; the proposed depreciation expense and rates; and the proposal to include a negative salvage rate. Panhandle was instructed to submit a compliance filing in accordance with the directives furnished in the Initial Decision within 60 days of issuance of the ID. On April 26, 2021, a number of parties filed respective Briefs on Exceptions; on May 17, 2021, multiple parties filed respective Briefs Opposing Exceptions. Agenda item G-1 may be an order on the ID, on the lack of compliance filing by Panhandle responsive to the ID, or both.

G-2 – Standard Applied to Complaints Against Oil Pipeline Index Rate Changes (Docket No. AD20-10-000). On March 25, 2020, the Commission issued a Notice of Inquiry (NOI) relating to the Standard Applied to Complaints Against Oil Pipeline Index Rate Changes. Specifically, the NOI seeks to address the recent proposal to eliminate the Substantially Exacerbate Test as the preliminary screen applied to complaints against oil pipeline index rate changes and to apply the Percentage Comparison Test as the preliminary screen for complaints. Additionally, the NOI solicits comment on the use of the 10 percent threshold when applying the Percentage Comparison Test to complaints. A number of stakeholders filed respective Comments and Reply Comments on June 16, 2020 and July 16, 2020. Agenda item G-2 may be an order on the NOI.

Hydro

H-1 – Cushaw Hydro, LLC (Docket No. P-906-032). On February 8, 2021, the Commission issued an order denying the request of Cushaw Hydro, LLC (Cushaw Hydro) to amend the authorized capacity for the existing Cushaw Hydroelectric Project No. 906. On March 10, 2021, Cushaw Hydro filed a request for rehearing of the February 8 order, asserting that the Commission erred in assuming that the nameplate rating remained the same as it originally had been documented in 1929. Cushaw Hydro stated that a filing made in 2019 furnished photographic evidence reflecting the new nameplate rating effective from an upgrade in the 1990s, and consequently, the rated capacity of the project should be modified. Agenda item H-1 may be an order on the request for rehearing.

H-2 – Pacific Gas and Electric Company (Docket No. P-2107-047). On February 28, 2022, the Commission issued an order modifying and approving the recreation plan of Poe Hydroelectric Project No. 2107, as owned and operated by Pacific Gas and Electric Company (PG&E). The recreation plan had been submitted by PG&E on September 30, 2020 in accordance with prior Commission guidance. Specifically, the recreation plan incorporates all of the recreation improvements required by Article 404 and does not include a proposal to construct a new, all-weather hiking trail. The February 28 order, however, contemplated and subsequently incorporated preliminary cost estimates and conceptual design alternatives to construct a new hiking trail. On March 30, 2022, PG&E filed a request for rehearing of the February 28 order, stating that the requirement to construct the new, all-weather Poe Hiking Trail was not feasible and not supported by any information in the formal record of the proceeding. Agenda item H-2 may be an order on the request for rehearing.

Certificates

C-1 – Texas Gas Transmission (Docket No. CP21-467-000). On June 25, 2021, Texas Gas Transmission, LLC (Texas Gas) filed an application (Application) requesting Commission authorization to construct and operate the Henderson County Expansion Project (Project). The Project involves the construction and operation of approximately 23.5 miles of 20-inch-diameter pipeline and 0.1 miles of 16-inch-diameter pipeline between Henderson County, Kentucky and Posey County, Indiana; a new tie-in facility and mainline valve in Henderson County, Kentucky; a new meter and regulating station and Point of Demarcation in Posey County, Indiana. The Project would also involve the modification of Texas Gas's existing Slaughter Compressor Station (Webster County, Kentucky) and existing meter and regulating station (Johnson County, Indiana). The Project would provide up to 220 million standard cubic feet of natural gas per day to Southern Indiana Gas and Electric Company d/b/a CenterPoint Energy Indiana South (CenterPoint) at its existing AB Brown Generating Station in Posey County, Indiana. The Commission issued a draft Environmental Impact Statement (EIS) for the Project on April 14, 2022 and a final EIS for the Project on August 25, 2022. Commission staff found in the final EIS that while the Project would result in limited adverse environmental impacts, approval of the Project would not constitute a major federal action significantly affecting the quality of the human environment if constructed and operated in accordance with the mitigation measures recommended in the final EIS. Agenda item C-1 may be an order on the Application.

C-2 – Golden Pass Pipeline LLC (Docket Nos. CP21-1-000, CP21-458-000). On October 2, 2020, Golden Pass Pipeline LLC (Golden Pass Pipeline) filed applications (Applications) requesting Commission authorization to relocate, modify, and eliminate certain pipeline facilities in Calcasieu Parish, Louisiana and Orange County, Texas that had been previously approved by the Commission, but not yet completed, as part of Golden Pass Pipeline's Pipeline Expansion Project in Docket No. CP14-518-000 (such relocation, modification, and elimination, the Amendment Project). The Commission issued a draft Environmental Impact Statement (EIS) for the Amendment Project on February 11, 2022 and a final EIS for the Amendment Project on June 24, 2022. Commission staff found in the final

EIS that while the Amendment Project would result in limited adverse environmental impacts, approval of the Amendment Project would not constitute a major federal action significantly affecting the quality of the human environment if constructed and operated in accordance with the mitigation measures recommended in the final EIS. Agenda item C-2 may be an order on the Applications.

C-3 – Limetree Bay Terminals, LLC (Docket No. CP22-507-000). On August 31, 2022, Limetree Bay Terminals, LLC (Limetree Bay) filed a petition for declaratory order (PDO) seeking a jurisdictional determination with respect to the inter-ship transfer of liquefied natural gas (LNG) between maritime vessels moored alongside one another at the Limetree Bay Terminals in St. Croix, U.S. Virgin Islands. According to the PDO, the United States Coast Guard has requested that, before allowing Limetree Bay to facilitate such ship-to-ship transfers of LNG by third parties, Limetree Bay first obtain an order from the Commission that either (i) disclaims jurisdiction over ship-to-ship transfers of LNG between third parties that occur within the company's harbor or (ii) authorizes those operations by approving Limetree Bay Terminals as an LNG terminal. Limetree Bay asserts that the Commission should issue a declaratory order disclaiming jurisdiction over the Limetree Bay Terminals because the Limetree Bay Terminals: (i) do not include facilities dedicated to the import or export of LNG, but instead permits ship-to-ship transfers of LNG to occur at general-use pier facilities that are outside the scope of the natural gas facilities to be regulated by the Commission; (ii) are not located at or near the point of import or export of LNG, but instead would serve as a transshipment point for transfer of LNG that has already departed a point of export elsewhere, and will not be used to offload LNG into St. Croix, where there is no local demand for LNG; (iii) would not receive or send out gas via a pipeline and therefore is not located at the place of import/export where a pipeline crosses an international border; (iv) would not own or operate equipment through which LNG is reintroduced into a pipeline such that the LNG terminal facilitates the interstate transportation of natural gas by pipelines; and (v) do not require certification under Section 7 of the Natural Gas Act because the third-party ship-to-ship transfer of LNG will neither receive nor transmit LNG by pipeline onto or from St. Croix. Agenda item C-3 may be an order on the PDO.

C-4 – Tennessee Gas Pipeline Company, L.L.C. (Docket No. CP20-493-001). On April 21, 2022, the Commission issued an order (Order) authorizing Tennessee Gas Pipeline Company, L.L.C. (Tennessee) to construct, install, modify, operate, and maintain certain natural gas compression facilities for its East 300 Upgrade Project in Susquehanna County, Pennsylvania, and Sussex and Passaic Counties, New Jersey (Project). On May 19, 2022, Food & Water Watch (FWW) requested rehearing of the Order (such filing, the Rehearing Request), asserting the Order is deficient in that it fails to establish need in light of state climate law and violates the National Environmental Policy Act in that its rests on a deficient final Environmental Impact Statement. On June 21, 2022, the Commission issued an order providing that while the Rehearing Request is deemed denied by operation of law, the Commission would nonetheless further consider and address the Rehearing Request in a future order. On September 2, 2022, Tennessee filed a Request for Notice to Proceed with Construction of Compressor Station 321 and Compressor Station 327 (NTP Request) as part of the Project (Project). The NTP Request asks the Commission to allow Tennessee to initiate construction activities at Compressor Station 321 and Compressor Station 327 as soon as September 19, 2022, to enable Tennessee to provide service to the Project shipper as of the

Project's anticipated November 1, 2023 in-service date. On September 6, 2022, Food & Water Watch (FWW) filed an objection (Objection) to the NTP Request, arguing that the Commission should not grant the NTP Request until it acts substantively on the Rehearing Request. On October 6, 2022, Commission staff issued a letter order approving the NTP Request. Agenda item C-4 may be an order on the Rehearing Request and/or the Objection.

C-5 – Rio Grande LNG, LLC (Docket No. CP16-454-004). On May 5, 2016, Rio Grande LNG, LLC (Rio Grande) filed an application under Section 3 of the Natural Gas Act (NGA) and Part 153 of the Commission's regulations for authorization to construct and operate a liquefied natural gas (LNG) export terminal on the north embankment of the Brownsville Ship Channel in Cameron County, Texas. At the same time, Rio Bravo Pipeline Company, LLC (Rio Bravo) filed an application under NGA Section 7(c) and Part 157 of the Commission's regulations for authorization to construct and operate a natural gas pipeline system that would deliver gas to the terminal for liquefaction and export. On November 22, 2019, the Commission issued an order (Order) authorizing Rio Grande's and Rio Bravo's respective proposals, subject to conditions. Ordering Paragraph (B) of the Order directed Rio Grande to make the Rio Grande LNG Terminal available for service within seven years of the Order, or by November 22, 2026. On April 6, 2022, Rio Grande filed a request (Extension Request) for a two-year extension of time, until November 22, 2028, to complete construction of the Rio Grande LNG Terminal and commence service, explaining that as a result of unforeseen impacts from the COVID-19 pandemic, Rio Grande was no longer able to complete construction of the Rio Grande LNG Terminal in accordance with the timeline set forth in the Order. A number of entities filed motions to intervene and protests of the Extension Order, asserting that Rio Grande has not shown that good cause exists for the Commission to grant the Extension Request. These protestors point out, among other things, that Rio Grande has entered into various offtake agreements for service prior to the November 2028 construction deadline sought in the Extension Request. Protestors also contend that changed circumstances require additional Commission review and voids the Commission's prior environmental review of the Rio Grande LNG Terminal. On May 11, 2022, Rio Grande filed an answer (Answer) refuting the various points raised by protestors. For example, Rio Grande asserts that the Commission has appropriately recognized the unforeseeable impacts of the COVID-19 pandemic, acknowledging that it, plus a project proponent's continued interest its project despite these impacts, satisfy the Commission's good cause inquiry. The Answer does not dispute that portions of the Rio Grande LNG Terminal will be in commercial operation prior to November 2028, but asserts that such fact does not require the Commission to deny the Extension Request as placing the Rio Grande LNG Terminal in-service sequentially as each liquefaction train is completed will allow Rio Grande to provide LNG to European customers. The Answer also argues that the protestors' efforts to misdirect and mislead the Commission into conducting a de novo environmental review of the Rio Grande LNG Terminal are contrary to established Commission precedent, represent an effort to exhaust Commission resources, and frustrate the development of needed energy infrastructure that facilitates efforts to secure more U.S. natural gas for European allies. Agenda item C-5 may be an order on the Extension Request.

C-6 – Corpus Christi Liquefaction Stage III, LLLC, and Corpus Christi Liquefaction, LLC, Cheniere Corpus Christi Pipeline, LP (Docket Nos. CP18-512-002, CP18-513-002). On November 22, 2019, the Commission issued an order (November 2019 Order) authorizing

Corpus Christi Liquefaction, LLC and Cheniere Corpus Christi Pipeline, L.P. (collectively, Corpus Christi) to site, construct, and operate the Corpus Christi Liquefaction Project (Project). The Project consists of the siting, construction, and operation of seven midscale liquefaction trains with a maximum total production capacity of 11.45 million metric tons per annum, one full containment liquefied natural gas (LNG) storage tank, and an associated 21-mile-long 42-inch-diameter pipeline and appurtenant facilities. The November 2019 Order contemplated that all facilities would be constructed and made available for service within five years of the date of the November 2019 Order (i.e., by November 22, 2024). On December 7, 2021, Corpus Christi filed a request (Extension Request) with the Commission for an extension of time until June 30, 2027 to complete the construction of the seven midscale liquefaction trains and storage tank portions of the Project (collectively, the Stage 3 Project). On May 6, 2022, the Commission issued an order (Extension Order) granting the Extension Request. On June 6, 2022, Sierra Club and Public Citizen (together, Intervenors) requested rehearing of the Extension Order (such filing, the Rehearing Request). Intervenors assert that the Commission erred in not re-evaluating whether the public interest still supports the Project when it issued the Extension Order, and that Corpus Christi had not demonstrated that good cause existed to grant the Extension Request. On June 21, 2022, Corpus Christi filed an answer (Answer) to the Rehearing Request, asserting that the Commission is not required to re-evaluate an underlying order's findings when considering a request for extension of time and that Corpus Christi has demonstrated good cause for an extension, as the Commission found in its Extension Order. Agenda item C-6 may be an order on the Rehearing Request

1018 Permitting Reform: OPED _ Charlie Melancon, former Congressman and Louisiana Secretary of Wildlife and Fisheries, writes that increasing US production of oil and gas is good for the economy but that reforms to permitting at the federal level are key to getting projects done faster and cheaper. "Our government should recognize the value of promoting LNG exports and proudly support the robust American energy sector," writes Melancon. The Times-Picayune | The New Orleans Advocate

10**18 Troutman Pepper: 10th Circuit Resolves Jurisdictional Dispute, Finds FPA Jurisdictional Limit Does Not Apply to Non-FERC Agency orders** On September 30, the U.S. Court of Appeals for the Tenth Circuit issued an opinion in *Save the Colorado, et al. v. Spellmon*. The case arose from various conservation group challenges to the U.S. Army Corps of Engineers (Corps) and U.S. Fish and Wildlife Service's (Service) decision to grant the city and county of Denver, acting through its Board of Water Commissioners (Denver Water or municipality), a discharge permit to expand the reservoir of its Gross Reservoir Hydroelectric Project, which is licensed by the Federal Energy Regulatory Commission (FERC or Commission). The central issue revolved around whether the U.S. courts of appeals have exclusive jurisdiction over challenges to non-FERC decisions arising under statutes related to the development of hydropower projects under the Federal Power Act (FPA). The Tenth Circuit ultimately held that petitions against orders by non-FERC agencies do not warrant exclusive jurisdiction in the U.S. courts of appeals.

The case began after Denver Water proposed to increase its local water supply by raising the height of the dam, thereby expanding the reservoir of its $464 million Gross Reservoir Expansion Project located in Boulder County. Before Denver Water could implement the expansion, however, the municipality needed to: (1) apply to the Corps for a permit allowing discharge of dredge or fill materials into the surrounding waters pursuant to Section 404 of the Clean Water Act (CWA); and (2) apply to FERC to amend its license to carry out the proposed expansion.

Section 404 of the CWA authorizes the Corps to issue permits for the discharge of dredge or fill material into navigable waters. To expand the reservoir, the municipality planned to put concrete in the area downstream of the dam, which would inundate wetlands and require a 404 permit. After conducting a review under the National Environmental Policy Act (NEPA) and Endangered Species Act (ESA), the Corps ultimately granted the municipality a discharge permit. Later, the municipality applied for an amendment to its license with FERC, and after conducting its own environmental assessment, the Commission amended the municipality's license.

Various conservation groups petitioned the Federal District Court for the District of Colorado for review of the Corps' discharge permit, claiming that the Corps violated the CWA, ESA, NEPA, and the Administrative Procedure Act. The District Court dismissed the petition for lack of subject-matter jurisdiction and found that jurisdiction over the matter belonged exclusively to the U.S. courts of appeals, due to the judicial review provision under the FPA, 16 U.S.C. § 825*l*(b). The District Court noted that while generally, a party challenging an agency action must file a petition in a federal district court, the FPA provides exclusive jurisdiction to the U.S. courts of appeals in challenges to orders issued by the Commission on "all issues inhering in the controversy." The District Court interpreted this phrase as inclusive of non-FERC orders, such as the Corps' grant of the discharge permit.

The Tenth Circuit reversed and found FPA's provision on exclusive jurisdiction to be unambiguously limited to challenges involving the Commission's order itself and non-inclusive of orders by other agencies, such as the Corps or the Service. The court noted that the only time courts have applied a jurisdictional limitation to challenges against other agencies' orders under the FPA was when (1) the order was triggered by the FPA or the Commission's obligations under another statute; (2) the order lacked significance outside the Commission's process; or (3) the provisions of the order were incorporated as enforceable terms into the Commission's license. The court found none of the exceptions applicable here because the Corps' order was triggered by the CWA, ESA, and NEPA, not the FPA or FERC's obligations under those statutes; (2) the Corps allowed the municipality to discharge fill into the water without requiring prior approval by FERC to amend the license, and (3) the Corps' permitting conditions were not enforceable terms under the Commission's amended license. The court thus concluded that since the conservation groups sought relief from the Corps' decision and not the Commission's approval of the amended license, the jurisdictional provision under the FPA did not restrict jurisdiction to the court of appeals.

The case has been remanded to the District Court for further proceedings.

A full text of the opinion can be found **here.** - Elizabeth J. McCormick and Chuck Sensiba

1018 **Nuclear: Virginia Gov. Glenn Youngkin's upcoming budget proposal will include $10 million to establish the Virginia Power Innovation Fund to support research and development in nuclear, hydrogen, carbon capture and other innovative technologies**. Half of the money would be used to expand the state's nuclear energy industry and deploy a small modular reactor in southwest Virginia within 10 years. **Nuclear Newswire (American Nuclear**

Society)

1018 Troutman & Pepper: Supreme Court of California Finds FERC License Preempts Challenge to FERC Order - Elizabeth J. McCormick and Chuck SensibaOn August 1, the Supreme Court of California upheld a decision by the Court of Appeal, which found that the Federal Power Act (FPA) preempts application of the California Environmental Quality Act (CEQA) when the state is acting on its own behalf as licensee of a hydroelectric project.

The case stems from the Federal Energy Regulatory Commission (FERC or Commission) relicensing proceeding for the Oroville Hydroelectric Project (Project) in Butte County, CA in which the California Department of Water Resources (DWR) is the FERC licensee. In 2006, DWR and relicensing stakeholders entered into a settlement agreement, which included provisions governing project operations, environmental protection, recreation, cultural resources, flood control, land use, and other issues that the parties proposed to be included in the FERC license. DWR filed the settlement agreement and a Preliminary Draft Environmental Assessment (PDEA) with FERC, which used the PDEA as a basis to prepare its own environmental impact statement (EIS) pursuant to the National Environmental Policy Act (NEPA). Butte and Plumas counties (Counties) participated in settlement discussions but ultimately declined to sign.

In 2008, DWR prepared an environmental impact report (EIR) in which it analyzed the same three project alternatives considered by FERC's EIS. The EIR provided that DWR undertook the analysis as part of its application for water quality certification under the Clean Water Act, and because it could inform DWR's decision, as a licensee, whether to accept the license. The EIR also included mitigation measures that DWR proposed to implement following FERC's issuance of the license, including measures related to wildlife, noise, air quality, public health and safety, geology, and soils.

Following DWR's certification and issuance of the EIR, the Counties filed petitions challenging its sufficiency and compliance with CEQA. The petitions sought orders setting aside DWR's certification of the EIR, enjoining DWR's operation of the Project and requiring that DWR "suspend all activity under the [EIR] certification that could result in any change or alteration in the physical environment" until certification of a sufficient EIR and "other equitable or legal relief that the Court considers just and proper."

The trial court found the EIR sufficient and rejected the Counties' claims. The Court of Appeal found that the Counties' CEQA claims, to the extent they challenged the settlement agreement, were entirely preempted by FERC's jurisdiction under the FPA and, to the extent they challenged the Water Board's issuance of a water quality certification, were premature since the Water Board had not yet issued its water quality certification.

The Supreme Court of California undertook review to address two issues. First, whether the FPA preempts application of CEQA when the state is acting on its own behalf as the licensee of a FERC-regulated hydroelectric project; and second, whether the FPA preempts state court challenges to an EIR prepared pursuant to CEQA to comply with Section 401 of the Clean Water Act. The Supreme Court found that the second issue was not properly presented and declined to address it.

With respect to the extent to which the FPA preempts the application of CEQA where the state is the licensee, the court first discussed the long and well-established history of federal preemption with respect to licensing of hydroelectric facilities, citing *First Iowa Coop. v. Federal Power Commission*, 328 U.S. 152 (1946), and *California v. FERC*, 495 U.S. 490

(1990), which concluded that "state regulatory efforts that conflicted with the exclusive federal licensing authority granted by the FPA were preempted." The court noted, however, that these cases did *not* consider "whether Congress intended to occupy the field to the extent of precluding a state from exercising authority over its own subdivision's license application," or the extent to which the FPA infringed upon "the state's prerogative to govern the work of its own agency in a manner that does not conflict with federal law."

The Supreme Court concluded that the Counties' CEQA claims, to the extent they were being used to challenge and unwind the terms of the relicensing settlement agreement, were preempted by the FPA and that allowing such a challenge to stand "would raise preemption concerns to the extent the action would interfere with the federal process … or with FERC's jurisdiction over the proceedings." Though the Counties dropped their request for injunctive relief, the court noted that "[a] state court order granting the injunctive relief the Counties initially sought would stand as a direct obstacle to the accomplishment of Congress's objective of vesting exclusive licensing authority in FERC."

With respect to the Counties' requests for "other equitable or legal relief that the Supreme Court considers just and proper," the court considered the environmental sufficiency of the EIR itself, which DWR prepared pursuant to CEQA and intended to use in connection with certain project-related permitting, mitigation, and other decision-making. On this issue, the court found that the state was not preempted and that "DWR can undertake CEQA review, including permitting challenges to the EIR it prepares as part of that review, in order to assess its options going forward." The court found that DWR's CEQA review would not interfere with FERC's jurisdiction or exclusive licensing authority, and that "these activities are a far cry from the conflicting state regulations imposed on private actors at issue in *First Iowa* and *California v. FERC*. Rather, the court held that "[a] CEQA challenge to the Department's EIR is not inherently impermissible, nor is it clear that any mitigation measures will conflict with the terms of the license ultimately issued by FERC."

1018 Troutman & Pepper: FERC Denies Interior's Requirement for Ongoing Species Notifications: - Morgan M. Gerard and Chuck Sensiba On September 22, the Federal Energy Regulatory Commission (Commission or FERC) issued an order on rehearing (Rehearing Order), denying the U.S. Department of the Interior's (Interior) request to include a requirement for a hydroelectric project to notify resource agencies if any activity may affect a federally listed Endangered Species Act (ESA) species and had not already been considered in the issued license (Notification Recommendation).

The ESA requires federal agencies to consult with Interior if an agency action may affect a listed species or its critical habitat. This consultation generally ends when a final license or permit is issued. In the relicensing proceeding for the Rollinsford Hydroelectric Project No. 3777 (Project), the only ESA-listed species with the potential to occur in the Project area is the northern long-eared bat, and consultation for this species was completed through measures in the license to limit tree clearing during certain seasons. Therefore, without another specific species to consult on under the ESA, Interior submitted the Notification Recommendation under Federal Power Act (FPA) Section 10(j), which allows certain resource agencies, including Interior, to make recommendations for inclusion in the license, which FERC must adopt unless it determines that the recommendation conflicts with applicable law.

In the Rehearing Order, the Commission rejected Interior's 10(j) Notification

Recommendation for the second time. In the earlier Commission order issuing a subsequent license (License Order) for the Project, the Commission declined to include Interior's Notification Recommendation as a requirement in the license. There, the Commission explained that post-license ESA consultation procedures are already in place, thus rendering Interior's recommendation unnecessary. The Commission also referenced standard license Article 11, which requires that a licensee complies with modifications required by the Commission for the conservation and development of fish and wildlife resources, upon the Commission's initiation or upon recommendation of Interior or other wildlife resource agencies. Interior requested rehearing of the License Order, arguing that the Commission acted arbitrarily and capriciously in violation of the Administrative Procedure Act (APA) in rejecting the Notification Recommendation.

In the Rehearing Order, the Commission reiterated its reasoning to reject the Notification Recommendation and reinforced its approach as consistent with recent Commission staff orders. In *City of Woonsocket, R.I.* (a licensing proceeding where Interior recommended a similar notification requirement), Commission staff declined to include the notification condition because an Interagency Task Force report already provided a framework for identifying issues, information gaps, and the need for protection measures post-licensing. Following staff's earlier reasoning, the Rehearing Order concluded that the Task Force report, coupled with Article 11 and the Commission's regulations, already provided post-license ESA procedures, thus obviating the need for Interior's proposed measure.

FERC's order is available here.

1018 **Troutman & Pepper: DOE Announces $13.5 M Distribution to Hydroelectri Facilities Though the Hydroelectric Production Incentive Program:** On September 9, the U.S. Department of Energy (DOE) announced that it would distribute $13.5 million to incentivize hydroelectric generation in the United States. The financial support is part of the Hydroelectric Production Incentive Program, which provides funding for electricity generated and sold from dams and other water infrastructure projects that will add to or expand hydropower generation.

Congress authorized the Hydroelectric Production Incentive Program through Section 242 of the Energy Policy Act of 2005 and began funding the program annually in 2014. In November 2021, Congress directed $125 million for the program through the Bipartisan Infrastructure Law. The goal of the program is to encourage the growth of clean energy and ensure that hydropower continues to be a reliable source of renewable energy. DOE highlights that while 31.5% of renewable electricity generation in the United States comes from hydropower, less than 3% of more than 90,000 dams in the United States actually produce power. The incentive program seeks to increase this percentage by adding generation equipment to dam sites, which would bring hydropower capacity up by 12%.

This year's funding is going to support a record number of 55 hydroelectric facilities, and almost a third of the facilities consist of new applicants to the program. Part of the increase in applicants comes from DOE's decision to expand the program's eligibility criteria to include facilities located in communities with inadequate electric service. Discussing the mission of the program, Grid Deployment Office Director Maria Robinson explains that "investments from the Bipartisan Infrastructure Law recognize that hydroelectricity is essential to strengthening the power grid and providing reliable, clean, and affordable energy for our communities. Funding through the Hydroelectric Incentive Program will enhance existing hydropower facilities through capital improvements focused on grid resiliency, dam safety, and environmental improvements, making hydropower facilities more energy efficient and resilient."

Read more about DOE's funding update here.

1017 LNG/World Market: Europe is facing another issue with natural gas as dozens of ships with liquefied natural gas cargo -- including 35 off the coast of Spain -- are circling the region with nowhere to dock and may soon seek an alternative market, sources say. Experts say a shortage in Europe of regasification plants and pipelines means the supplies sitting as floating storage can not be used. Reuters

APPENDIX C
TELECOM SECTOR NEWS

1107 Fiber: Cable One doubles down on fiber with $50M Ziply investment *By Diana Goovaerts* Cable One handed Ziply an initial $22.2 million in November 2022 and expects to dole out the remaining $27.8 million before the end of September 2023.

1107 BB: Kansas doles out $16M for rural broadband in first of 3 funding rounds *By Diana Goovaerts* This week's award round is the first of three it has planned to dole out more than $83 million.

1107 REG SCAN: Full edition | Past issues

The FCC issued a consumer alert about a potential uptick in student loan debt robocalls, and an enforcement advisory to remind providers of their role in protecting consumers from robocalls.

The FCC announced it committed nearly $183 million in additional Emergency Connectivity Fund support, bringing total program commitments to over $6.3 billion.

Oral argument has been scheduled for Dec. 5, 2022, in the appeal of the FCC's first quarter 2022 universal service contribution factor.

USAC filed the Federal Universal Service Support Mechanisms Fund Size Projections for the first quarter 2023.

NARUC released a draft resolution calling on Congress or the FCC to confirm state authority to enforce minimum service quality standards for federally subsidized services.

NTCA, et al. discussed NTCA's proposals for updates to the A-CAM and CAF BLS mechanism.

1107 Section 230: The Hill: Twitter to no longer enforce rules against "misinformation"

1104 Bead and Muni Entry: Free State Foundation: The Adverse Impact of Municipal and Cooperative Internet Service on Entry and Competition by Michelle Connolly - Below is the Introduction and Summary and the Conclusion to this latest FSF *Perspectives*. A PDF version of the complete *Perspectives*, with footnotes, is here.]

Introduction and Summary

Current government policies encourage states to consider funding deployment of government-owned (municipal) and cooperative-owned broadband infrastructure in the same way as privately offered Internet services. Yet, eighteen states have laws prohibiting or limiting municipal and/or cooperative broadband provision. And for seemingly good reason.

In a recent analysis of 2015-2020 FCC Form 477 data for Illinois, Tianjiu Zuo and I find that, all else equal, municipal and cooperative participation in the broadband marketplace had a disproportionately negative impact on additional Internet service provider (ISP) entry – and, consequently, overall competition. Municipal ISPs are found to have a particularly large dampening effect on further ISP entry relative to cooperative ISPs, suggesting concerns over inherent municipal regulatory conflicts of interest are strongly dissuasive to private ISPs when they consider entering a market. The smaller but still significant negative impact of cooperative ISP presence reflects private ISP concerns over competing with municipal- and cooperative-owned ISPs that are partially insulated from market forces and have the ability to charge discriminatory rates for access to utility poles. Combined with the observation that municipal and cooperative ISPs were not generally the first providers within their territories, these findings suggest that looking to municipalities and cooperative utilities to lead deployment in unserved areas or increase competition in underserved areas is misguided. Policies that promote these groups' eligibility for federal subsidies are likely to reduce rather than increase longer-term competition.

Those in favor of encouraging municipal and cooperative entry in the broadband market consider this to be a good way to increase deployment to unserved areas, especially rural, low-income areas. Even if an area currently has Internet service, municipal or cooperative entry is viewed as improving competition and, ultimately, helping end user consumers.

Those against encouraging municipal and cooperative broadband provisions point to three anti-competitive concerns: regulatory conflicts of interest for municipal ISPs, insulation from market pressures (i.e., non-economic market entry and exit), and exemption from pole attachment rate regulation in cases where the municipal/cooperative ISP also provides electric and/or telephone service and therefore owns local utility poles.

Tianjiu Zuo and I empirically consider these arguments in "Impact of Municipal and Cooperative Internet Provision on Broadband Entry and Competition" (2022). Looking at within-census-block variation over twelve time periods from 2015 to 2020, we find evidence that potential ISPs do not consider competition from municipal and cooperative ISPs to be the same as that from private ISPs. Specifically, we find, all else equal, that relative to a private ISP incumbent, the presence of a municipal or cooperative ISP incumbent lowers the likelihood of further ISP entry into a census block.

Conclusion

These findings suggest that the current emphasis on encouraging municipalities and cooperatives to begin providing broadband service as a means of both pushing further deployment and increasing competition is misguided.

Concerns over regulatory conflicts of interest for municipal ISPs are strongly supported by our findings. Given that municipalities have control over permitting and rights of way, this is not a problem that can be circumvented.

Concerns over municipal and cooperative ISP insulation from market forces and risks of excessive pole attachment rates in locations where the municipality or cooperative owns the utility poles are also supported by our findings. This lends support to the argument that municipal and cooperative pole owners (whether providing ISP service or not) should not be exempt from Section 223 of the Telecommunications Act of 1996. If municipalities and cooperatives were subject to the same regulatory treatment as private pole owners, their ability to discourage further ISP entry in their service areas through charging excessive pole attachment rates would be greatly reduced.

Overall, these empirical findings show that rather than encouraging deployment and competition, the presence of municipal and cooperative ISPs discourages further entry and competition from private ISPs. In Illinois, we observe that since municipal and cooperative ISPs were rarely the first provider within their territory, their entry into the broadband market has not generally increased deployment. In turn, if their presence then discourages further entry, then the net effect is to decrease the number of broadband providers that would otherwise potentially provide service in those markets.

* Michelle P. Connolly, Ph.D., is a member of the Free State Foundation's Board of Academic Advisors and Professor of the Practice within the Economics Department at Duke University. Professor Connolly served two separate terms as Chief Economist for the FCC.

1104 Legislation: House Energy & Commerce Leader (soon to be chair) Rodgers' (R-WA) Statement on FCC Space Bureau — House Energy and Commerce Republican Leader Cathy McMorris Rodgers (R-WA) released the following statement in response to Federal Communications Commissioner (FCC) Jessica Rosenworcel's announcement that the FCC would be establishing a Space Bureau at the agency. "The FCC plays a critical role in licensing satellite communications systems, but the Chairwoman has not yet provided details or clarity on the structure or role of her newly proposed Space Bureau. As the committee of jurisdiction, Energy and Commerce is responsible for directing FCC action, and the agency needs to be open and transparent with the committee members about its efforts to regulate satellite communications. Modernizing the FCC's satellite licensing rules and authorities will continue to be a top priority for E&C Republicans to help usher in a new era of American innovation and investment in this growing sector." **CLICK HERE** to read more about the Satellite and Telecommunications Streamlining Act discussion draft.

1103 FCC Nominations: The mystery of Biden's deadlocked FCC | Benton Institute for Broadband & Society [nothing new- brad]

1103 Robocalls: PA AG Shapiro files lawsuit against NY company Fluent for its alleged role in distributing robocalls to PA consumers

1103 Workforce: AT&T and Lumen Technologies will subsidize job training programs to help build out broadband infrastructure in response to the Talent Pipeline Challenge President Joe Biden issued. Lumen has pledged $80 million a year for training and hiring and AT&T is teaming up with the Communications Workers of America on an apprenticeship task force. Fierce Telecom

1103 Administrative Law: A consolidated administrative law case to be argued before the U.S. Supreme Court Monday could have implications for challenges to FCC, FTC, FERC and other federal agency decisions. Cochran v. SEC (docket 21-1239), and similar case Axon Enterprise v. FTC (docket 21-86) concern whether parties have to wait for a final agency ruling before they can appeal to the courts. A SCOTUS ruling against the agencies could allow companies with transaction or enforcement proceedings before federal agencies to challenge the agency process in district courts before a hearing designation or forfeiture order is issued. If successful, parties could challenge an FCC enforcement action in district court, appeal that decision to a court of appeals, and also seek judicial review of the agency decision. It's likely there would be an increase in requests for stays and preliminary injunctions, to prevent "dual-tracking" of appeals.

1103 Section 230 – CA Law – which so far not enjoined - Starting Jan. 1, 2024, social media companies must submit twice-annual reports to the California attorney general that include the company's terms of service, how the company defines hate speech, extremism, harassment, disinformation, and foreign political interference, how the company responds to violations of its terms of service, how automated moderation systems are used to enforce terms of service, and when human review is involved in enforcement.

1103 Phoenix Center Policy Bulletin No. 62, *The Broadband Tribal Gap: An Empirical Evaluation,* download free here. First, as many of you know, deploying broadband to all Americans has long been a goal of the U.S. Government. Some progress has been made and the bi-partisan Infrastructure Investment and Jobs Act of 2021 provides a sizable subsidy of nearly $45 billion to complete the task. Broadband deployment to Tribal areas in particular is a longstanding problem, and thus has received considerable attention by the Federal Communications Commission ("FCC"). Has this focus been productive? In a new analysis released today entitled ***The Broadband Tribal Gap: An Empirical Evaluation,*** Phoenix Center Chief Economist Dr. George S. Ford studies broadband deployment over the years 2014-2020 in Tribal and non-Tribal census tracts using the FCC's Form 477 data to quantify progress. This gap is measured as the difference in average broadband availability between Tribal and non-Tribal census tracts. George uses unmatched and matched samples, and a sample of census tracts within 30 miles of a Tribal area is also analyzed with and without matching. In all cases, George finds that the gap between Tribal and non-Tribal census tracks has been getting closer to zero over time and by 2020 (the last year data are available) the gap was near zero in all cases, especially when the deployment differences are conditioned on a few covariates. Indeed, the Tribal Gap is nearly fully explained by differences in demographic characteristics. These results are encouraging and suggests efforts to close the Tribal Gap are meeting with some success, though many factors that determine deployment largely are beyond regulatory remedy (e.g., population density).

1103 Section 230 - **Ninth Circuit became the first court of appeals to rule that the Section 230 shield can still be raised despite the "Fight Online Sex trafficking Act" (which allows victims of online sex trafficking to suite websites that know about the trafficking on their websites).** Ninth Circuit – based in San Francisco - sided with social discussion website Reddit in a lawsuit brought by the victims of child pornography who alleged the platform profited from trafficking. A string of similar sex trafficking cases are underway - Twitter is being sued for specifically refusing for nine days to take down child pornography videos after being notified by the plaintiffs. The videos were allegedly viewed more than 167,000 times. The 11th Circuit has oral arguments on Nov. 17 in a case against Omegle.com LLC, a website that randomly matches strangers to video chat. The district court cited Section 230 as a basis for dismissing a lawsuit claiming Omegle matched an 11-year-old girl with a sex predator.

1103 Inflation and Grants – Doug Dawson CCG Consulting: Diana Goovaerts wrote an article for Fierce Telecom with the headline that *Inflation has doubled RDOF build costs*. The article is based on interviews with three ISPs that won RDOF funding in the December 2020 reverse auction – TekWav, Nextlink, and Plains Internet. All three ISPs plan to satisfy the RDOF obligations with a combination of fixed wireless and fiber. Two of the three ISPs were quoted as saying that the cost to build the networks to satisfy the RDOF obligations has doubled since they won the award – the third said costs have risen materially. The three companies have significantly different obligations. Plains Internet is obligated to build broadband to 250 passings in Kansas, while Nextlink must build to pass 206,136 locations over twelve states.

There is a lot to unwrap in the assertion that costs have doubled. First, everybody in the industry will agree that the costs of both material and labor have increased over the last two years. But most of the ISPs I've been working with estimate the increase to be between 15% and 30%, differing by region and the planned technology. The article includes an interview with Jonathan Chambers of Conexon, who believes that the claims that a doubling of cost is highly unlikely.

But the interviews raised a few issues related to the cost of building broadband that aren't talked about a lot. Clearly, materials and labor are more expensive. In the case of wireless ISPs that are obligated to deliver superfast speeds, the costs I've been seeing for newer radios like the ones from Tarana look to be triple or more the cost of other radios.

One issue that is not being widely discussed is the availability of loans. One of the things that always happens when interest rates increase is that banks drastically curtail making loans to new customers. They may still offer higher interest rate loans to existing customers, but an ISP looking for a new banking relationship is going to hit a stone wall. That is exactly what the Federal Reserve has in mind with interest rate increases – they want to cool off the economy by curtailing new lending. The trick for the Fed is threading the needle to cool the economy enough to slow inflation but not enough to cause a crash.

The difficulty in getting bank loans creates a dilemma for an ISP trying to fulfill an obligation to build a broadband solution with specified construction deadlines. And RDOF award winner has three years, starting with the year after the FCC finalizes the award to build 40% of the promised network. The rest must be built in the following three years. For the big RDOF winners, that probably means having to start on some of the construction right away to meet the first completion goal.

The RDOF awards suppose that recipients will fund the majority of a new network, with debt or equity – and except for the giant ISP winners like Charter, most ISPs rely on new debt. The current big grant programs like BEAD also assume an ISP will bring a significant matching fund to a project, most likely debt for most companies. It's a huge problem for somebody trying to build a grant or subsidy project if they can't find the loans.

The three RDOF winners didn't cite the impact of higher interest rates. I've seen interest rates on infrastructure projects nearly double over the last year, and that means double the interest expense from the day of borrowing - a huge financial hurdle to overcome for any kind of infrastructure project.

The other issue identified by Joseph McGrath of TekWav is the time lag between the cost of a new network and the revenues needed to pay for them. Most ISP have historically expanded organically in the past. They add new territory and customers each year that is partially funded by the cash flow from the existing business, supplemented with short-term loans. An ISP trying to grow fast must abandon the organic growth model. This means spending a lot of money before there is any new revenue. I've always referred to this as the cost of expansion, and it's only a problem for an ISP that is trying to grow faster than what its existing financial structure can handle.

Unfortunately, anybody taking any sizable RDOF or grant projects will experience expansion costs. The ISP will be paying staff to work in the new areas and paying interest on the cost of the equipment for the new area, with far more costs to eat than would be experienced with organic growth. I have to wonder if the big RDOF winners built these costs into its plans. A company that has never tried to grow quickly before is likely to understand the cost of expansion.

The bottom line is that RDOF winners will either have to absorb these unexpected costs or default on the subsidy. There is a fairly minor penalty for defaulting on RDOF funding before any funding has flowed or construction begins. But I would suspect the FCC will level much bigger fines on somebody who has already taken funding, and the fine would likely include returning everything they've received. As Jonathan Chambers was quoted, there is a cost for taking federal funding – and it's always more expensive than anticipated.

1103 **VoIP: FTC Action Against Vonage Results in $100 Million to Customers Trapped by Illegal Dark Patterns and Junk Fees When Trying to cancel their service**. Vonage will be required to provide a simple way to cancel - FTC alleges that the company used dark patterns to make it difficult for consumers to cancel and often continued to illegally charge them even after they spoke to an agent directly and requested cancellation. According to the FTC's complaint, the company bills their customers for these services on an automatic basis every month, either by charging a credit or debit card or withdrawing money from a customer's bank account directly. Consumer accounts ranged from $5 to around $50 each month, while business accounts could cost up to thousands of dollars each month. In many cases, the company signs customers up using "negative option" plans that begin with a free trial, but require the customer to take action to avoid being charged.

The FTC's complaint alleges that while Vonage has provided numerous ways to easily sign up for their plans, it has made the cancellation process markedly more difficult, leaving consumers and businesses on the hook for services they no longer want. Vonage's practices, the complaint alleges, harmed consumers in numerous ways, specifically by:

Eliminating cancellation options: Despite allowing its customers to sign up for services online, over the phone, and through other venues, the complaint alleges that starting in 2017, Vonage made the decision to force customers to cancel only by speaking to a live "retention agent" on the phone. The complaint notes that this practice runs counter to Vonage's own advice to its clients not to "frustrate customers by requiring them to contact you for support that should be available on a self-service basis" and that "[i]t should be just as easy to return your product as it is to buy it."

Making cancellation process difficult: In addition to forcing customers into one cancellation method, it made that method difficult. The company created significant cancellation hurdles, including by making it difficult to find the phone number on the company website, not consistently transferring customers to that number from the normal customer service number, offering reduced hours the line was available and failing to provide promised callbacks. The complaint cites one internal Vonage email saying customers were "sent in a circle when they want to downgrade or remove the service."

Surprising customers with expensive junk fees when they tried to cancel: In many cases, customers who are able to access the cancellation line are told they will have to pay an unexpected early termination fee that was not clearly disclosed when they signed up for Vonage service. In some cases, these fees were in the hundreds of dollars.

Continuing to charge customers even after they canceled: Customers who managed to speak to an agent and request cancellation often found that their accounts continued to be charged. Even when they contacted Vonage to complain, they received only partial refunds of the money they were charged without authorization.

Enforcement Action

As a result of the FTC's action, Vonage has agreed to a proposed court order that would require it to:

Stop unauthorized charges: Vonage will be required to have consumers' express, informed consent to charge them.

Simplify cancellation: Vonage will be required to put in place a simple cancellation process that is easy to find, easy to use, and will be available through the same method the consumer used to enroll (e.g., website, email address, or other application).

Stop using dark patterns: The order prohibits Vonage from using dark patterns to frustrate consumers' cancellation efforts.

Be upfront with consumers about subscription plans: The order requires Vonage to be upfront with customers about the terms of any negative option subscription plans, including any action that must be taken to avoid being charged and timeline in which that action is required.

Pay $100 million to be used for refunds: Vonage would be required to turn over $100 million to the FTC to be used to provide refunds to consumers.

The Commission vote authorizing the staff to file the complaint and proposed stipulated final order was 4-0. The FTC filed the complaint and proposed order in the U.S. District Court for the District of New Jersey.

1103 Section 230: Free State Foundation's Randy May in Real Clear Markets: "What the Chief Twit Should Do Now to Avoid the Hellscape" A PDF of this *Perspectives* is **here** Real Clear Markets November 2, 2022 Okay, Elon Musk is officially now the self-proclaimed Chief Twit, with 111 million followers no less! On the day his $44 billion acquisition of Twitter closed, Musk said – via a tweet, of course – that "the bird is freed." An intriguing signal to those – like myself – who have bemoaned the overly censorious moderation actions of those in control BCT, or Before Chief Twit. Throughout this "Thinking Clearly and Speaking Freely" series, I have argued that Twitter, and other web platforms like Facebook and YouTube, have censored too much content that should have remained within the realm of public debate. Think of all the instances of speech suppression related to COVID-19, such as its origin, treatment options, or preventative measures. Or think of the New York Post's suppressed Hunter Biden laptop story. Or speech regarding sensitive, even if controversial, matters of religion, race, and sexuality.

Echoing his claim that "the bird is freed," Mr. Musk told advertisers that "it is important to the future of civilization to have a common digital town square." But he also said this in the same letter to advertisers: "Twitter obviously cannot become a free-for-all hellscape, where anything can be said with no consequences! In addition to adhering to the laws of the land, our platform must be warm and welcoming to all."

While I doubt the future of civilization is at stake, nevertheless, the stakes aren't insignificant for the cause of advancing greater free speech online.

As difficult as the task may be, if Musk somehow can find the sweet spot between a less censorious "digital town square" than that which presently exists and a "free-for-all hellscape," he can take an important step to advance the cause of free speech in the public square. In a nation in which protecting free speech is an important part of our constitutional culture – or at least should be – this would be no small achievement.

Of course, there will always be differences between reasonable people regarding particular instances of content moderation line-drawing. But reasonable people should be able to agree that there are distinctions that can be drawn, by Twitter and other private companies operating in good faith, between matters that should remain subject to legitimate debate and those that, instead, fall within the realm of the anything goes "hellscape." For example, posts by ISIS recruiting for terrorist acts, or posts calling for targeting minorities with violence, or posts for promoting sex trafficking might be readily placed in the hellscape bucket.

So, what specifically should the Chief Twit do now?

Musk has said he wants to form a "content moderation council" with widely diverse viewpoints to advise him on the way forward. Previously, I've proposed two fixes that I hope the council and the Chief Twit will consider. Importantly, these ideas are free market-oriented actions undertaken by private sector firms, not actions directed by the government.

First, as I proposed in Part 8 of this series, platforms like Twitter, proclaiming that they wish, in the main, to be public squares promoting free speech, should incorporate into their "terms of service" explicit provisions establishing a *presumption* that content will not be removed or otherwise restricted absent *clear and convincing evidence* that the speech violates some specific, clearly delineated content prohibition. As an integral part of this presumptive *"free speech default,"* the terms of service should contain procedures that allow for rapid escalation and supervisory review by senior officials of initial "take down" decisions.

I understand there's the possibility, even likelihood, that given human nature, political or philosophical biases will continue to affect moderation decisions. But with a top-level "free speech default" policy in place, approved and backed by the Chief Twit and overseen by senior executives, it will be more difficult for such biases to operate in a way that ultimately affects censorship decisions.

Second, as proposed in Part 10, Twitter should implement new consumer empowerment approaches that put even more tools in the hands of its users to determine the parameters of the content they wish to access. In that part, I discussed novel ideas regarding the development of a so-called "middleware" layer consisting of personalized moderation tools that would operate on top of the normal platform interface. New market entrants then could compete to provide users with distinctive versions of middleware consisting of different kinds of filtering tools and other moderation features.

Users then would be able to opt into the speech rules they prefer while still retaining the ability to communicate with other people on the platform. And other newly employed technical means, like blockchain, non-fungible tokens, or "smart contracts," also might be deployed to enable greater consumer choice.

These free market-oriented approaches to address the excessive censorship problem have the virtue of implementation and control by private firms, rather than relying on imposition of heavy-handed, often politically motivated, government solutions.

In any event, whether heavy-handed, politically motivated or not, government solutions – which necessarily involve some degree of government compulsion or direction –

run up against the First Amendment's free speech guarantee. They should never be a preferred solution if free market alternatives, such as those outlined above, might remedy the problem – here, too much censorship of content that should remain open to debate in the online public square.

The free speech values at the heart of the Founders' First Amendment, central to the development of our country's Constitutional Culture, are threatened with loss by the growing Cancel Culture. The Chief Twit has an opportunity to adopt free market-oriented free speech-friendly content moderation policies for his platform that will result in decidedly less suppression of speech.

He should seize it.

1103 Satellites: FCC prepares to launch new Space Bureau *By Monica Alleven* FCC Chairwoman Jessica Rosenworcel today announced a plan to reorganize the FCC with a new Space Bureau to better manage the growing satellite industry. DOC-388826A1.docx DOC-388826A1.pdf DOC-388826A1.txt NECA'S TAKE: **Chairwoman Rosenworcel announced plan to reorganize the FCC's International Bureau into a new Space Bureau** and a standalone Office of International Affairs. The FCC said these changes will help ensure the FCC's resources are better aligned so it can continue to fulfill its statutory obligations and keep pace with the rapidly changing realities of the satellite industry and global communications policy. **NECA WW**

1103 Section 230: PJ Media – "New Twitter CEO Elon Musk has made another move to prevent viewpoint discrimination while he sorts out the dumpster fire known as Twitter's "Trust and Safety" department. Bloomberg reports that employees got locked out of some internal tools used for content moderation: Most people who work in Twitter's Trust and Safety organization are currently unable to alter or penalize accounts that break rules around "misleading" information, "offensive" posts and "hate speech," except for the most high-impact violations that would involve real-world harm, according to people familiar with the matter. Those posts were prioritized for manual enforcement, they said. ***The important part of this news is not that employees lost access to the tools. Instead, it is the confirmation that prior management empowered Twitter employees to determine what constitutes "misinformation."*** For those who have had a Twitter account limited, shadow banned, or suspended, the article provides another piece of data. According to the report, a Twitter employee banned you, not an algorithm. "Detection of policy breaches can either be flagged by other Twitter users or detected automatically, but taking action on them requires human input and access to the dashboard tools. Those tools have been suspended since last week, the people said.""

1103 VOIP Numbering Requests: COMMENTS DUE BY 11-18 ON INTERCONNECTED VOIP NUMBERING AUTHORIZATION APPLICATION FILED BY [1] OPENTACT, INC. DA-22-1151A1.docx DA-22-1151A1.pdf [2] IDT DOMESTIC TELECOM, INC. DA-22-1153A1.docx DA-22-1153A1.pdf & IP LINK TELECOM, INC. DA-22-1150A1.docx DA-22-1150A1.pdf NECA's TAKE: FCC seeking comments on applications for authorization to obtain North American Numbering Plan telephone numbers directly from the numbering administrator for their VoIP service. Applications were filed by IP Link Telecom, Opentact, Mobilesphere, and IDT Domestic Telecom. **Comments are due Nov. 18, 2022.**

1103 Satellites: Dish touts value of licensed spectrum in private networks *By Monica Alleven* Once the subject of criticism for hoarding spectrum, Dish Network now finds itself touting the benefits of licensed spectrum for serving the private network sector.

1103 Robocalls: FCC Reminds Providers to Combat Unlawful Student Loan Robocalls NECA's TAKE: FCC issued a consumer alert announcing the robocall response team is warning consumers about a potential uptick in student loan debt robocalls in the wake of the recent announcement of nationwide federal student loan debt relief. The team said consumers should be aware there is no fee to apply for student loan debt relief and that applications are accepted only at StudentAid.gov/DebtRelief. The FCC also issued an enforcement advisory to remind voice service providers of their role in protecting consumers by combatting illegal robocalls aggressively, especially student loan robocalls. **NECA WW**

NOTE – The FCC *Enforcement Advisory* remind voice service providers of their obligation to combat illegal robocalls aggressively, and warned that the Enforcement Bureau would be vigorously enforcing rules requiring voice service providers to police this kind of traffic. **Voice service providers with questions about the FCC's obligations regarding illegal robocalls may contact the firm for more information.**

In this case, the *Advisory* is precipitated by a rash of student loan robocalls following recent announcements regarding student loan forgiveness and deferment. These calls typically state that the caller is informing the recipient that the payment suspension will end or that a petition can be filed on their behalf to get a certain amount of their loan "dismissed." Some common campaigns purport to be from the "student loan forgiveness center" or from a state forgiveness center.

Several rules place obligations on providers to police their networks for suspected illegal robocall traffic, including:

• Permissive Call Blocking (Section 64.1200(k)(4)): Voice service providers may block all traffic from an originating or gateway provider that, when notified by the Commission, fails to effectively mitigate illegal traffic within 48 hours or fails to implement effective measures to prevent new and renewing customers from using its network to originate illegal calls.

• Mandatory Blocking (Section 64.1200(n)(5)): Gateway providers must block all identified illegal traffic and any substantially similar traffic (unless its investigation determines that the traffic is not illegal) when it receives a notice of suspected illegal traffic from the Enforcement Bureau.

• Robocall Mitigation (Section 64.1200(n)(2)-(3)): Voice service providers must take steps to effectively mitigate illegal traffic upon actual written notice of such traffic from the Commission's Enforcement Bureau. This includes taking effective measures, such as knowing its customers, to prevent new and renewing customers from using the provider's network to originate illegal calls.

• Robocall Mitigation Database Removal (Section 64.6305(e)): An originating or gateway voice service provider that is unable to fully implement Secure Telephony Identity Revisited/Signature-based Handling of Asserted Information using toKENs (STIR/SHAKEN) must submit a robocall mitigation plan to the Robocall Mitigation Database. An originating or gateway voice service provider that knowingly or negligently transmits illegal robocalls may have its certification removed from the Robocall Mitigation Database. Intermediate and terminating voice service providers may only accept traffic from originating or gateway providers that are in the Robocall Mitigation Database and that have not been delisted.

The FCC expressly stated that its Enforcement Bureau will vigorously enforce the Commission's rules and obligations placed on voice service providers responsible for originating or acting as the U.S. gateway for scam student loan robocalls.

1103 Section 230: Bloomberg: Suspected Russian Plot used Cartoons to "influence" voters: Social media users "tied to Russia" are using political cartoons to try to influence the outcome of tight electoral races ahead of the US midterms, according to research provided exclusively to Bloomberg News. According to the "social media analysis firm" Graphika Inc. Members of a Russian group accused of meddling in prior US elections have pushed internet memes that promote right-wing conspiracy theories in a way that aims to undermine support for Democratic political candidates, . . .promoted racist and inflammatory talking points in recent days about Democratic candidates including US Senator Raphael Warnock and gubernatorial candidate Stacey Abrams in Georgia, Governor Kathy Hochul in New York, US Senate candidate John Fetterman in Pennsylvania and US Senate candidate Tim Ryan in Ohio, researchers found. The campaign also promoted misleading Russian talking points, such as the idea that Ukraine is a Nazi state and the notion that the Biden administration—by lending aid to Ukraine—is contributing to a falling standard of living in America. Since Oct. 29, those users have shared six new political cartoons, signed by "Schmitz," according to Graphika's latest findings.

[I searched for Schmitz cartoons in Duck Duck go and Google and none of the referenced images came up in the search. If this reporter is doing his or her job – this article logically cites the most egregious examples – which, at least based on the descriptions in the article - seem pretty tame – here is the first:]

One post claimed that Ryan, the Democratic running for US Senate in Ohio, would release incarcerated drug traffickers from prison.

[Whoa – in the current political environment that stance is a problem and if the cartoon is inaccurate – that's classic disinformation…so I did a single google search of Ryan and nonviolent criminals…and it appears during his failed 2019 Presidential run – in June of that year Ryan answered a voter who asked him if he would commit to the ACLU's request to reduce US prison population by 50 percent if he became president. "I don't know if it's by 50 percent or not, but we want to get all the nonviolent criminals out, for sure," Ryan responded – which is immortalized on video. I'm all for it." A month later, Ryan fully committed to the ACLU's pledge to reduce the prison population by 50 percent when asked by another of the organizations' "rights for all voter." "I don't know what the exact numbers are, but I am for legalizing marijuana, decriminalizing, and getting those people out," Ryan responded when asked if he would commit to the ACLU pledge. "So, I don't know exactly what the number is, but yeah," he continued. The ACLU voter pressed Ryan on the subject, saying they wanted a "yes or no" if possible, to which Ryan relented. "Yes," Ryan responded. The bulk of prisoners in for simple drug possession (a "non-violent" offense) plead down from trafficking charges – or at least that's what even mainstream media outlets conceded in reporting over Biden's Pardon initiative widely touted in the press last month. This article suggests the group is promoting "racist and inflammatory talking points" but this first example – which logically should be the most egregious - is a "cartoon" portraying facts – and not just facts - --- fairly-easy-to-find-online-by-a-non-journalist-that-had-no-inkling-of-the-accuracy-of-the-cartoon-description -- facts. Didn't read any description of this cartoon that suggest there are "racist images" in the cartoon. So all we can tell from the article – is that the information being provided by the cartoon is accurate – and that – in the current political environment it will most certainly cost Ryan a few votes. It may be unpleasant for Ryan to have to constantly contend that when he agreed with the pledge to get out all nonviolent offenders from prisons in 2019, he was not really advocating for getting all the nonviolent offenders from prisons in 2022, but that's hardly inflammatory – and note this was the first and arguably most egregious example (aka an accurate cartoon.) …. Note – In 2021 - Ryan voted against a motion to condemn calls to "defund", "disband", or "abolish" the police.] the Second example, according to the article:]

Another image spread a racist image of Senator Warnock of Georgia, portraying him as threatening people who didn't support the Black Lives Matter movement.

[OK – that sounds really bad….but again – simple google search and I found Warnock did support BLM and did suggest "unflattering" characterizations about those that did not - but that neither fact (nor any other fact) could ever excuse a "racist" image. However, given the relative accuracy of media reports these days and, the less than persuasive/accurate reporting with respect to the first example presented – I decided to locate the image itself to see if there was something about it that could be taken as racist – again - couldn't find it online. Given the apparent bias of the authors - it seems at least possible that the authors characterized the cartoon as racist because it implies that some might not agree with Warnock's support for BLM (and might not vote for him on that basis) and that not supporting BLM is itself racist – a view that – especially after the revelation of BLM's admittedly Marxist anti-nuclear family bias and in particular the – spectacular financial mismanagement - some might say fraud - by the movement's founders – most I suspect would think such a characterization might not be accurate. Note I'm not saying that that is logical or makes sense to characterize a cartoon as racist because it is depicting Warnock supporting a cause he objectively supported – just because it was BLM and people might not vote for him on that basis….just that these days – such illogical thinking is a definite possibility. I'm also curious to see how the cartoon portrays Warnock as "threatening" people that did not support BLM." Can't tell, but if the drawing just suggests Warnock is making strong statements that support BLM – which was accurate……just want to know how they came up with the word "threat" back to the Article – which they would provide a link so the reader can see if it's objectively racist in some manner – back to article]

The efforts have gained limited traction online, with the activity primarily occurring on platforms popular with the far-right, such as the social-media network Gab and a discussion forum at patriots.win, according to the report.

[I'm guessing I could find all six cartoons on "patriot.win" but the site doesn't let you search it without signing up and I already get way too much e-mail – and spent the last 5 minutes in this distraction – back to work…….]

1103 Section 230: House Oversight Committee R's: Biden Administration Continues to Suppress Free Speech and Discredit Legitimate Criticism—House Committee on Oversight and Reform Ranking Member James Comer (R-Ky.) and several Oversight Committee Republicans reiterated concerns over reports indicating the ***U.S. Department of Homeland Security (DHS) continues to operate a taxpayer-funded censorship campaign to target online speech and discredit legitimate criticism of the Biden Administration.*** In a letter to DHS Secretary Alejandro Mayorkas, the

Republican lawmakers emphasize that any campaign by the agency to silence narratives that contradict the Administration's preferred perspective is unacceptable and are seeking all documents and communications related to the inception and operation of any online content monitoring program hosted by or in partnership with DHS. "We write to continue our investigation into the Department of Homeland Security's (DHS) efforts to stifle lawful First Amendment-protected speech of American citizens in public online settings," **wrote the Republican lawmakers.** "The Biden Administration continues to suppress free speech and discredit legitimate criticism as mis-, dis-, or mal- information. Committee Republicans have now become aware of an extensive censorship campaign originating within DHS's Cybersecurity and Infrastructure Security Agency (CISA). This effort leverages partnerships with third parties to silence narratives that contradict the Administration's preferred perspectives on issues important to the national discourse. While the Administration publicly paused the creation of its 'Disinformation Governance Board,' DHS continues to suppress dissenting viewpoints." New reports reveal CISA leverages partnerships with left-leaning private organizations to identify and target political speech unfavorable to the Administration, especially around its handling of COVID-19 policy. **This effort began after CISA partnered with left-leaning organizations and Big Tech companies to launch the Election Integrity Partnership (EIP). EIP's complaint-processing platform enabled groups—including the Democratic National Committee—to submit concerns and were resolved by the online user being deplatformed or restricted.** "The federal government should not be censoring free speech," **continued the Republican lawmakers.** "*Further, your agency is poorly positioned to moderate speech on social media. In fact, you deliberately spread disinformation in a White House press conference last year surrounding false allegations that your Border Patrol Agents were whipping Haitian migrants at the border in Del Rio, Texas. E-mails now reveal that you were made aware—hours before these comments—that the photographer who captured the images you were referring to told news outlets that he and his colleagues 'never saw agents whipping anyone.' Armed with the truth, you still perpetuated a false narrative that agents were whipping migrants at the border."* Read the letter here.

1103 USF Contribution Update: Billy Jack Greg bjgreg@frontier.com on USF Demand Projections:

Happy New Year! Yesterday USAC published its Universal Service Fund (USF) demand projections for the first quarter of 2023. As shown on the attached spreadsheet, assuming that the contribution base is the same as for the current quarter, **the USF assessment factor for the first quarter 2023 will increase from 28.9% to 33.2%,** just below the peak assessment factor of 33.4% seen in the second quarter of 2022. USF revenue projections are due out at the beginning of next month, at which time it will be possible to accurately calculate the assessment factor for the first quarter of 2023.

A few observations:

1. Overall projected USF demand for the first quarter is $2.130 billion, **$216 million more** than the fourth quarter of 2022.

· As shown below, the increase in overall USF quarterly demand is caused by large increases in demand for the Schools & Libraries, Rural Health & High Cost Funds. Only the Low Income Fund declines.

USF Projected Demand
1Q2023 v. 4Q2022
$ Millions

USF Funds 1Q2023 4Q2022 Difference
High Cost 1,152.4 1,085.1 67.4
Lifeline 201.2 211.4 -10.2
Rural Health 70.8 0.1 70.7
Connected Care 8.5 8.4 0.1
Schools & Libraries 697.1 609.1 88.1
TOTAL USF Demand 2,130.1 1,914.0 216.0

2. The increase in overall USF demand in the first quarter is due to a large increase in out-of-period adjustments. Total adjustments for the first quarter **increase** demand by a total of $102.7 million, while prior period adjustments during the fourth quarter **decreased** demand by $147.3 million. As a result, the total "swing" in prior period adjustments in the first quarter amounts to $250 million, more than the overall increase in quarterly demand of $216 million.

3. **High Cost Fund:** Pursuant to the Connect America Fund Order of the FCC (released November 18, 2011), legacy High Cost Fund (HCF) support is phasing down as the Connect America Fund (CAF) delivers support for networks that provide broadband to unserved and underserved areas of the nation.

· In one of the latest chapters of the CAF roll-out, the winners in the second phase of the Rural Digital Opportunity Fund (RDOF) reverse auction were announced in December 2020. This phase of the RDOF auction will distribute $9.2 billion in support over the next 10 years in order to provide broadband service to 5.2 million homes and businesses in census blocks around the country which are unserved by broadband offering speeds of at least 25 Mbps. The FCC has been authorizing release of RDOF funding in successive waves of approval since 2021.

· For the first quarter of 2023 USAC projects that RDOF funding will amount to $170.3 million, or $681 million on an annualized basis for all of 2023. This represents a $31.1 million decrease in quarterly RDOF funding compared to the fourth quarter.

· In spite of the fact that the FCC authorized $920 million in annual RDOF funding for phase one of RDOF, it is unlikely that funding will reach this level, at least in the near term. As a result of deficiencies in numerous "winning" bids, the FCC has failed to authorize disbursements to several large bidders, and on July 21, 2022, the FCC levied proposed fines of $4.3 million against 73 companies who have apparently defaulted on their submitted bids.

· At the same time that RDOF funding is ramping up, CAF II "model-based" funding has almost disappeared. During 2021 the High Cost Fund provided $1.517 of CAF II "model-based" support to incumbent price cap carriers; however, in 2022 this support plummeted to $19.7 million in 2022, or $4.9 million per quarter. For the first quarter 2023 CAF II "model-based" support continues at the $4.9 million level.

· In 2020 the FCC also established the 5G Fund as part of the HCF to take the place of Phase II of the Mobility Fund. The 5G Fund will have a budget of $9 billion over a 10-year period, including $1 billion for "precision agriculture," which will be awarded in two phases by reverse auction, similar to the RDOF auction. The 5G Fund will provide support for areas without unsubsidized access to 5G speeds for wireless services, however, implementation of the fund is not likely until 2023 as the FCC seeks to determine which areas will be eligible for support from the fund. In the interim, competitive ETCs receiving legacy high cost support for mobile wireless services have been required to use increasing amounts of their support for 5G services, equivalent to 2/3 of such legacy support in 2022. No specific additional funding for the 5G Fund was included in USAC demand projections for the first quarter of 2023.

4. For the first quarter of 2023:

o frozen and phased-down legacy HCF support of $180.5 million will be directed to rate-of-return carriers, price cap carriers and competitive carriers (CETCs);

o CAF II "model-based" support of $4.9 million will go to price cap carriers;

o $209 million in RDOF & CAF II auction-based support will go to a variety of carriers;

o $32.1 million will go to Alaska Plan support;

o CAF Broadband Loop support ("CAF BLS") of $261.6 million, Alternate Connect America Model (ACAM) support of $233.6 million, and intercarrier compensation (ICC) replacement of $89.4 million will go to rural carriers;

o $26.9 million will go to the Puerto Rico and Virgin Islands Funds;

o resulting in projected first quarter program demand for the High Cost Fund of $1.038 billion, $62.7 million less than the fourth quarter 2022.

5. Going-forward HCF program demand is adjusted by inclusion of prior period adjustments of $96.3 million and $18.11 million in USAC administrative costs, producing a net projected HCF demand for the fourth quarter of $1.152 billion, which is $67.4 million, or 6.2%, more than fourth quarter 2022 HCF demand.

6. In addition to the amounts included in projected HCF program demand, $47.5 million in incremental ACAM support, $6.78 million in Mobility Fund Phase I support, and $0.52 million for Rural Broadband Experiments is being paid out of accumulated HCF reserves in the first quarter.

7. Disbursements for CAF Phase II, mobility fund, rural broadband experiments and ACAM support from 2015 through 2022 slowed down and then reversed the growth in the accumulated HCF cash reserves. Total funds remaining to be disbursed from the HCF cash reserves at the end of the third quarter of 2022 amounted to $978.5 million, a decrease of $278.8 million since the beginning of 2022. A large portion of the HCF reserves is being retained to pay for additional ACAM support to rate of return carriers through 2026.

8. **Low Income Fund:** As a result of the FCC's Lifeline Order of January 31, 2012, which tightened requirements on recipients of Lifeline funding, overall Low Income Fund (LIF) demand has steadily declined from its peak of $2.4 billion in 2012 and amounted to $838.6 million in 2022.

· On March 31, 2016, the FCC adopted a new Lifeline Order, which expanded the program to include support for broadband, established a nationwide eligibility verification system, and adopted an annual cap on LIF funding of $2.25 billion, indexed to inflation. The inflation-adjusted LIF cap for calendar year 2023 is $2.573 billion.

· LIF program demand for the first quarter 2023 is projected to be $278.7 million, $11.4 million less than the fourth quarter. Inclusion of prior period adjustments of -$100.7 million and administrative costs of $23.3 million reduces overall LIF demand for the first quarter to $201.2 million. This is $10.2 million less than the fourth quarter, a decrease of 4.8%.

9. At the end of the third quarter 2022 the LIF had cash reserves of $406 million. Additions and disbursements since the beginning of 2022 increased the LIF reserve by $117 million.

10. The long-term decline in the demand for the LIF is driven by a reduction in Lifeline

subscribers across the nation. Although the number of eligible households has remained relatively stable since the entry of the 2016 Lifeline Order, Lifeline subscribers have fallen from 13.1 million at the end of the third quarter 2016 to 4.98 million at the end of the third quarter 2022, a decline of 8.1 million, or 61.8% in six years.

11. Some of the decline in Lifeline subscribers since the beginning of the pandemic can be attributed directly to the existence of alternative low-income support programs created during the public health emergency. In addition to the amounts included in LIF program demand, the FCC is also in charge of $3.2 billion for the Emergency Broadband Benefit (EBB) program and $14.2 billion for the Affordable Connectivity Program (ACP) made available by Congress under the Appropriations Act and the Infrastructure Act, respectively. Pursuant to rules adopted by the FCC on January 14, 2022, the ACP provides up to $30 per month to eligible households to offset the cost of broadband (up to $75 per month for eligible households on tribal lands). Discounts of up to $100 are also provided on the purchase of end-use devices for broadband. Although USAC administers the ACP, funding for the program comes straight from the US Treasury and does not directly affect the USF. Consumers can participate in both the ACP and Lifeline program and may apply ACP benefits to their Lifeline service or to a different service.

· The FCC noted in its Order of January 14, 2022, establishing the ACP that 9 million EBB recipients had been transferred to the new ACP. According to the FCC's ACP Claims Tracker, by the end of October 2022 ACP enrollment had increased to 14.68 million, almost three times the number of Lifeline subscribers.

12. **Rural Health Fund:** On June 25, 2018, the FCC released its Rural Health Fund (RHF) Funding Cap Order which raised the cap on the RHF from $400 million to $571 million as of FY2017, indexed to inflation.

· For FY2022 (July 2022 - June 2023) the inflation-adjusted RHF cap is set at $637.7 million.

· RHF support applications received by June 1, 2022, indicated that demand for the 2022 funding year would be $697.9 million, $60 million in excess of the RHF cap.

· USAC began the 2022 funding year by collecting $159.4 million for the RHF during the 3rd quarter of 2022, which is one-fourth of the $637.7 million annual cap. However, in July 2022 the FCC determined that $380.5 million in unused RHF funds would be available to offset program demand in future years, beginning with the 2022 funding year. Because of the availability of these unused funds along with the $159.4 million collected during the third quarter, no funds are being collected for the RHF demand during the 4th quarter of 2022.

· For the first quarter of 2023 USAC projects that RHF program demand will be $48.49 million, including administrative costs, which is half of the remaining funding requirement for the RHF during FY2022. With the addition of $22.3 million in prior period adjustments, overall RHF demand for the first quarter 2023 is $70.8 million, $70.7 million more than the fourth quarter of 2022.

· At the end of the third quarter 2022 the RHF had cash reserves of $1.131 billion. Additions and disbursements since the beginning of 2022 decreased the RHF reserve by $231 million.

13. **Connected Care Pilot Program**: On April 2, 2022, the FCC issued an Order establishing the Connected Care Fund (CCF) Pilot Program within the USF and making $100 million in funding available over a three-year period.

· To provide the $100 million, the FCC ordered that $8.33 million be collected each quarter for 12 quarters beginning in the fourth quarter 2020. The purpose of the pilot program is to determine the effectiveness of USF funding for connected telehealth care services provided to low-income consumers and veterans.

· In 2021 and 2022 the FCC announced four sets of pilot projects for 102 entities throughout the United States which will receive $98.2 million in funding under the CCF pilot program.

· The first quarter of 2023 is the tenth quarter the CCF pilot program is being funded, and the projected demand for the first quarter of $8.5 million is only $0.1 million higher than the fourth quarter.

· At the end of the third quarter 2022 the CCF had cash reserves of $63.4 million. Additions and disbursements since the beginning of 2022 have increased the RHF reserve by $23.9 million.

14. **Schools & Libraries Fund:** In its E-rate Modernization Order II (released December 19, 2014), the FCC increased the annual cap on the Schools and Libraries Fund (SLF) from $2.41 billion to $3.9 billion, indexed to inflation.

· The inflation-adjusted SLF cap for funding year 2022 (July 2022 – June 2023) is $4.456 billion.

· Based on estimates of SLF funding applications for the 2022 funding year, USAC projected that total SLF demand during FY2022 will be $2.873 billion, net of post-closing adjustments. This is $80 million more than FY2021 (including incremental pandemic support), but is $1.583 billion less than the current $4.456 billion cap.

· Assuming the availability of $500 million of unused SLF cash reserves from prior years, USAC projects that only $2.373 billion will need to be collected for the SLF during FY2022. As a result, SLF quarterly demand for the first quarter 2023 is projected to be $593.3 million, one-fourth of FY2022 annual demand.

· Prior period adjustments of $84.7 million and administrative costs of $19.1 million increase final projected first quarter SLF demand to $697 million, $88.1 million more than the fourth quarter, an increase of 14.5%.

· At the end of the third quarter 2022 the SLF had cash reserves of $3.702 billion. Additions and disbursements since the beginning of 2022 increased the SLF reserve by $209 million.

15. **USF Revenues:** Revenues in the USF contribution base for all of 2022 amounted to $34.9 billion, the lowest annual revenues in the history of the USF. Projected revenues for the fourth quarter of 2022 were $8.624 billion. If revenues for the first quarter of 2023 are the same as revenues for the fourth quarter, the USF assessment factor for the first quarter of 2023 will rise to 33.2%. However, if the trend of declining quarterly revenues continues, the USF assessment factor for the first quarter will be higher than 33.2%. USAC will come out with its projections of first quarter 2023 revenues at the beginning of December.

Regards, Billy Jack Gregg Universal Consulting P.O. Box 107 Hurricane, WV 25526 USA
304.562.3507 bjgregg@frontier.com

1102 Supply Chain - Hikvision letter responds to press reports indicating the FCC will ban authorization of end user video surveillance equipment that may never be connected to any public telecommunications or broadband networks. Hikvision asserted even when this