Fall/Winter 2021

Outlook:
Energy & Commodities

Understand the latest regulatory and industry trends

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Introduction

As the Biden administration approaches its first year in office, the legal and regulatory landscape for the U.S. energy and commodities industry continues to evolve.

In this report, we examine how new policy changes, net-zero challenges, the rise of ESG, and a renewed focus on antitrust and regulatory enforcement are impacting the industry. The report outlines some of the main themes discussed at our virtual mini-series this fall, part of our flagship Energy & Commodities Conference.

Thank you for spending some of your time with us as we explore these important topics.

Net-zero challenges

A lack of clear policy signals complicates energy and commodities transition strategies

Scanning the EHS horizon

Biden's ESG orders set stage for environment, health and safety action

Antitrust seen in more places

Biden administration draws harder line on antitrust enforcement

Regulatory and enforcement trends

2021 at the CFTC and FERC

The report outlines some of the main themes discussed at our virtual mini-series this fall.

By Raad Alkadiri and Shari Friedman

A lack of clear policy signals complicates energy and commodities transition strategies

Takeaways

- COP26 failed to deliver a clear policy pathway to net-zero by 2050.
- Investment signals for energy and commodity companies remain uncertain, even though financial institutions are increasingly setting ESG standards of their own.
- In the absence of a global governance framework and clear policy steps, energy and commodity companies will face continued uncertainty.
- Capital will be invested more inefficiently, and the energy transition will proceed more slowly.

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COP26 delivers no clear pathway to net-zero

COP26 in Glasgow may not have delivered as much as was hoped, but the meeting did underscore an important point: that the trajectory of energy transitions, if not their pace, is set. The climate debate has shifted fundamentally over the past few years. The science of climate change is no longer in dispute, nor is the imperative to reach net-zero by 2050 if the temperature rise is to be kept to 1.5 degrees centigrade above pre-industrial levels, and the worst ravages of climate change are to be avoided.

What remains, however, is the key question of how to accelerate change and how to put in place the framework to make the emissions target achievable. In that sense, COP26 missed the mark. No global governance structure was agreed upon, and no clear pathway to net-zero was presented. These omissions will make energy transitions a more difficult process in the long run.

Some progress, but a lack of policy detail

COP26 did deliver some notable achievements. The commitment to phase down coal use signaled a breakthrough, and rules for a global carbon trading system were agreed upon. In a first-of-its-kind agreement, specific financing commitments for South Africa's energy transition were made, and a broad pledge to end deforestation by 2030, which included Brazil, the Democratic Republic of Congo, and Indonesia (where most of the world's remaining virgin rainforests are), was also inked.

But the devil remained in the detail. While more countries have now formally announced long-term net-zero targets, many – such as China, India, Indonesia, and Russia – are aiming beyond 2050. Moreover, the commitments made offer little in the way of a detailed policy blueprint for how these emissions targets will be achieved, especially over the next nine years, when a lot of the heavy lifting needs to be done. The best COP26 could do was agree that countries would come back with more ambitious and detailed plans by COP27 next year.

Similarly, while the financial sector is stepping up its commitment to promoting common emission reporting standards and to directing capital to clean energy investment, the standards are still being developed, and access to capital for climate adaptation and mitigation is far from universal, especially for poorer countries that urgently need to fund these types of projects.

Companies need long-term investment signals

All of this still leaves an uncertain environment for the energy and commodities sectors as energy transitions unfold. The rewards for those companies that get their strategies right will be immense. The International Renewable Energy Agency (IRENA) estimates that US$131 trillion will be invested in energy transitions between now and 2050. Governments from major industrial economies, including China, Japan, and Germany, see the green transition as much as an industrial growth opportunity as a climate one.

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“The rewards for those companies that get their strategies right will be immense.”

But the absence of a commitment by governments worldwide to meeting net-zero targets by a common date, combined with the lack of clarity about the precise policies they will introduce to get the world to those targets, creates confusing investment signals for the energy and commodities sectors, both of which are generally characterized by long life cycle projects.

Put another way, the current regulatory and policy ambiguity and confusion complicates the ability of corporate leaders in these two sectors to make the right capital allocation choices at the right time to ensure that they can secure long-term capital access and maximize returns on investment through the transition period.

European energy crunch illustrates the investment challenge

The recent energy crunch in Europe illustrates the challenges energy companies face in the absence of clear policy guidance. In the past, a gas supply crunch and cyclical upswing in prices would encourage increased investment in the commodity, which, along with price effects on demand, would restore market balance.

But with rising uncertainty over whether gas will be considered a transition fuel in the medium to long term given the emissions associated with its production and transport, many companies will be reticent to invest in new capacity. At the same time, the gradual shift away from fossil fuel investment among banks and funds limits the availability of capital and undermines the long-term economics of these projects.

The world may need gas now, and in the future, and these projects may turn out to be profitable. But energy companies’ aversion to investing in what may become stranded assets before their life cycle is complete, and the higher cost of capital because of environmental, social, and governance (ESG) concerns, create an obstacle to capital allocation.

Indeed, some companies may instead direct capital toward renewables to mitigate this risk. But this approach carries dangers of its own, especially if these projects turn out to deliver significantly lower returns, as shareholders have yet to show that global welfare matters more than profit.

Availability of rare minerals a cause for concern

A similar challenge exists in other commodities sectors. The dependence of renewables on rare-earth minerals is already creating supply shortages that are driving up prices.

But in the absence of a clear demand picture in the medium term, and with increasing ESG standards being demanded for operations and financing, mining companies face challenging investment uncertainties of their own that could create additional bottlenecks that slow the pace of energy transitions overall.

Governments need to act collectively … and quickly

Establishing universal standards and collective policy steps to address climate change is not a panacea. Net-zero targets may still not be met by 2050. But in their absence, companies will continue to face uncertainty as multiple rules and jurisdictions apply, capital will be invested more inefficiently, and the transition is likely to be more sluggish at a time when the urgency of climate change demands rapid action.

The private sector can only do so much on its own to guide the transitions process. Companies have a duty to serve the interests of their shareholders, and in the absence of clearer investment signals, they will likely be more conservative with their capital allocation choices. Ultimately, they need governments to step up and provide greater policy certainty over the road map to net-zero, and, in that sense, COP26 was a missed opportunity.

About the authors

Raad Alkadiri is Managing Director for Energy, Climate and Resources at Eurasia Group. He focuses on the nexus between politics, economics, climate, and the energy sector, as well as their effects on market behavior and investment risk. He works closely with clients, advising them on capital-allocation options, risk-mitigation strategies, and policymaking. He also closely follows medium- and long-term geopolitical, energy, and climate trends, and their impact on the risk environment.

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The private sector can only do so much on its own to guide the transitions process.

By Benjamin H. Patton, Jennifer A. Smokelin, Jessyka S. Linton and Casey J. Snyder

Biden’s 2021 ESG orders set stage for environment, health and safety battles

The Biden administration is using regulatory bodies, such as the EPA and Departments of Labor and Transportation, to promote environmental, social and governance (ESG) policy objectives in addition to their normal job of promulgating safety-focused requirements. While this regulatory bent bypasses the constraints of the legislative process, it is still susceptible to push-back from other forces, notably states and state and federal courts, up to the U.S. Supreme Court.

Take*aways*

- Administration uses executive orders and rulemaking to promote ESG policies.
- States and the judicial system, including the Supreme Court, may curb or thwart certain requirements.

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ESG policy initiatives

Climate change. Biden has issued several executive orders directing federal agencies to implement ESG-related practices, including a key order on Jan. 27, called “Tackling the Climate Crisis at Home and Abroad.“ The order:

- Requires agencies to consider the effects of federal permitting decisions on greenhouse gas emissions and climate change;
- Initiates an agency-wide push to incorporate programs, policies and activities to promote environmental justice; and among other things,
- Encourages the development of renewable energy production on land and in water.

Key recent and ongoing EPA rulemakings affecting climate change include rules to:

- Reduce methane emissions from abandoned oil and gas wells;
- Cut emissions from existing oil and natural gas operations;
- Tighten emissions standards for transportation and other mobile sources; and
- Phase out hydrofluorocarbons, a potent greenhouse gas.

The administration’s use of regulatory agencies to further ESG policy objectives is apparent in OSHA’s recent involvement in climate change as a workplace safety issue, with the agency moving to implement standards to address heat and wildfire hazards.

PFAS. On Oct. 18, the Biden administration announced a joint effort with eight agencies to address the growing public health concern over certain per- and polyfluoroalkyl substances (PFAS), spearheaded by a four-year strategic roadmap from the EPA outlining next steps and efforts to regulate PFAS under major environmental laws and regulations. PFAS concerns implicate many industries, including industrial operations like metal and electronics manufacturing, as well as the packaging and transportation industries, to name a few.

“PFAS concerns implicate many industries, including industrial operations like metal and electronics manufacturing, as well as the packaging and transportation industries, to name a few.”

“The high-risk, high-reward nature of this business means that risks can present themselves at any moment, and proper due diligence must be performed to identify any such risk or signs of such risk.”

OSHA COVID-19 vaccine mandate. The recently released Emergency Temporary Standard (ETS) is an example of President Biden’s use of regulatory bodies to promote ESG policy objectives. Historically, OSHA used its regulatory authority to identify a hazard and implement a discrete requirement to address the identified hazard. Indeed, OSHA’s initial COVID-19 related ETS was focused on the healthcare industry and was not published until June 21 – what was then thought to be after the peak of the pandemic.

However, on Sept. 9, President Biden issued his “Path Out of the Pandemic,” in which he tasked OSHA with developing a significantly broader ETS to encourage vaccinations among the workforce. The temporary standard, effective Nov. 5, requires employers with over 100 employees to either:

- Ensure all employees are fully vaccinated; or
- Require unvaccinated employees to: (i) produce a negative test result at least once every seven days before coming to work; and (ii) wear a mask.

Under the standard, employers must provide paid time off for the time employees use to get vaccinated and/or recover from post-vaccination illness.

The rule is comprehensive, as state plans will be required to implement equally protective rules within 30 days of the effective date, or Dec. 5.

State-based opposition

Climate change. Arkansas, Mississippi, Nebraska, North Dakota and Wyoming have said that they would challenge any new federal policies that require the power sector to cut carbon emissions. Pennsylvania, which is expected to join the Regional Greenhouse Gas Initiative through a rulemaking set to take effect in 2022, is facing staunch opposition from Republican legislators arguing that such a decision must come from the legislative body and not the executive branch. At the federal level, in March 2021, 12 state attorneys general sued President Biden over his executive order directing agencies to consider the social cost of greenhouse gas pollution in future federal rulemakings, arguing the directive violated the separation of powers, although the lawsuit was later dismissed.

COVID-19 vaccine mandate. Several states that strongly oppose vaccine mandates may attempt to disrupt Biden’s use of agencies to promote policy by opposing the federal requirement once issued. For example, Republican attorneys general in seven states with their own state OSHA plans – Alaska, Arizona, Indiana, Kentucky, South Carolina, Utah and Wyoming – have vowed to fight the federal testing and vaccination mandate.

The judicial system and Supreme Court

President Biden, federal agencies and states are not the only contributors to forthcoming ESG policy in the law. The Supreme Court agreed to hear a case on interstate disputes over natural resources and likely will determine how the doctrine of equitable apportionment will apply to groundwater in *Mississippi v. Tennessee*, No. 2201 (argued Oct. 4, 2021). While the Supreme Court sidestepped questions relevant to ESG issues in the climate tort lawsuit *BP P.L.C. et al. v. Mayor and City Council of Baltimore*, it recently agreed to hear a challenge to the EPA’s authority to regulate greenhouse gas emissions in *West Virginia v. Environmental Protection Agency*. Elsewhere, municipal entities are suing chemical manufacturers throughout the United States over costs incurred to remediate PFAS impacts to groundwater and damages to natural resources, and future lawsuits challenging unfavorable regulatory outcomes over new PFAS regulations are likely.

Conclusion

As federal and state executive branches continue to roll out ESG objectives, the judicial system and states could stymie such initiatives based on concerns that such executive actions intrude on legislative powers. Expect more litigation challenging executive actions over ESG policy objectives as the contours of executive agency authority over ESG matters are defined.

> “Expect more litigation challenging executive actions over ESG policy objectives as the contours of executive agency authority over ESG matters are defined.”

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Ben concentrates his practice on environmental and safety regulatory and compliance. He routinely counsels companies in connection with major industrial accidents, internal investigations and root cause analysis, workplace culture, compliance assurance, crisis response, whistleblowers, process safety incidents, and workplace injuries and fatalities. Ben also advises companies on government agency investigations and enforcement, environmental litigation, and responses to regulatory rulemakings.

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Casey focuses on federal, state and local environmental regulations affecting a wide variety of industries and advises on environmental issues in real estate transactions. Additionally, he leverages his environmental insight to track and evaluate developments relating to climate change.

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By Edward W. Duffy, Michelle A. Mantine,
John R. Casey III and Joanna M. Howe

Biden administration draws harder line on antitrust enforcement

Take*aways*

- Enforcement authorities adopt stricter approach to antitrust issues.
- Previously accepted arrangements could be deemed anticompetitive.
- Businesses can manage investigations by taking affirmative steps now.

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The Biden administration's recent appointees are poised to implement several significant changes to antitrust enforcement. Federal Trade Commission (FTC) Chair Lina Khan and the nominee to lead the Department of Justice (DOJ) Antitrust Division, Jonathan Kanter, have advocated robust antitrust enforcement and departures from prior enforcement priorities. Khan and Kanter's aggressive approach will result in more challenges to mergers and business practices, including transactions that have historically been considered permissible.

'Holistic' antitrust approach on the horizon

The consumer welfare standard, the bedrock of U.S. antitrust policy for the last 30 to 40 years, holds that any transaction or course of conduct that tends to lower prices for consumers usually should not be challenged by the government.

However, the appointment of Lina Khan as FTC chair in March 2021 threatens to upend this bedrock principle. Khan rose to prominence through a piece she wrote in the *Yale Law Journal*, "Amazon's Antitrust Paradox," which critiqued the definition and application of the consumer welfare standard. Khan argued that the consumer welfare standard is ill-equipped to handle growing forces in the modern marketplace. Khan believes that the current standard is too narrowly focused on price, and neglects to take a holistic view of the idea of consumer welfare.

Khan wants to move past the established standard of evaluating only price effects and instead consider how a course of conduct or transaction affects consumer choice, the quality of the products available, the impact on labor, and more.

This theoretical argument has recently become policy at the FTC, with Khan distributing a memorandum to staff on Sept. 22, stating that the FTC needs to take a holistic approach to identifying harms, focus on power asymmetries, crack down on rampant consolidation, and address the "dominant intermediaries" who are in a position to dominate the supply chain based on their size and power. Khan also wants to focus FTC resources on the restrictive contract terms that are often imposed by dominant firms.

“Khan wants to move past the established standard of evaluating only price effects and instead consider how a course of conduct or transaction affects consumer choice, the quality of the products available, the impact on labor, and more.”

“Companies should also expect a more stringent approach toward merger regulation.”

Nominee Kanter has also offered some critiques of the application of the consumer welfare standard. Although he has not been as vocal as Khan in advocating antitrust reforms, Kanter is expected to increase antitrust enforcement and apply enhanced scrutiny to types of arrangements that have traditionally been viewed as competitive and lawful.

Anticipate and prepare for potential investigations and challenges

This shift in philosophy among enforcers will likely affect the day-to-day activities of market participants in the energy industry in a number of ways. First, the number of civil and criminal investigations is expected to increase. Even if such investigations do not find criminal or civil liability, they can deter potentially anticompetitive conduct. Second, contracts or clauses that restrict competition are more likely to be the subject of a lawsuit or investigation. These include exclusivity contracts, non-compete clauses, no-poach agreements, mandatory repair clauses, or predatory and bundled discounts. Third, businesses that directly face consumers will become a greater target for antitrust scrutiny. Further, in correspondence with the White House regarding gasoline price increases, the FTC stated it will challenge acquisitions of gasoline retailers by larger companies, target restrictive business practices (like minimum sale prices required by franchisors), and attempt to deter transactions likely to lead to anticompetitive effects. This expected surge in cases will also coincide with a gain in resources for enforcers. The FTC and DOJ are likely to receive increased funding, allowing them to hire additional staff. Additionally, Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (HSR Act) filing fees will likely increase in early 2022, which will contribute to the additional financial resources at the government’s disposal.

Companies should also expect a more stringent approach toward merger regulation. While previous regimes at the FTC had a practice of granting early termination to the statutory waiting period established by the HSR Act, this practice has been suspended indefinitely. Instead, the FTC likely will take, at a minimum, the entire waiting period to investigate a transaction. The FTC is also warning companies not to proceed with a transaction if an investigation is still underway. The FTC has started sending warning letters to parties, stating that the parties may close their transaction but the FTC is not precluded from finding the transaction unlawful at a later date. This new approach results in increased uncertainty for parties to transactions, as recently illustrated by 7-Eleven’s acquisition of Speedway from Marathon Petroleum. In that case, the parties completed the transaction following the termination of the statutory period despite a pending FTC investigation. The FTC later required that 7-Eleven divest approximately 8% of the acquired Speedway locations. Additionally, the FTC criticized the parties for consummating the transaction despite the ongoing investigation.

In light of the foregoing, companies should take several steps to deter and detect misconduct.

First, companies should develop and maintain robust antitrust compliance programs. These programs must include training tailored to the specific responsibilities of individual employees, adequate reporting procedures, monitoring, and audits. Additionally, company policy must permit and encourage reporting by employees. An extensive compliance program is a necessity in an era of heightened scrutiny. Should an antitrust violation occur, enforcement authorities often consider whether a company has implemented effective programs aimed at preventing and reporting misconduct. Enforcers may in turn offer compliant companies significantly reduced sentences, diminished penalties, or deferred prosecution or non-prosecution agreements.

Second, care should be taken to ensure documents and contracts are appropriately drafted and do not include unnecessarily inflammatory language, such as stating that a potential transaction will “reduce competition.” Likewise, in considering aspects of an agreement that could, in isolation, be viewed as anticompetitive (such as a non-compete clause), companies should consider whether such terms are necessary to further their goals, or whether less restrictive alternatives will be sufficient.

Finally, companies should ensure that their communications with competitors and trade associations are necessary and procompetitive. Similarly, all information-sharing participants must be informed of their legal obligations and keep documentary records about the content and purpose of their discussions. Even in an era of hyper-scrutiny, companies may be able to avoid investigations with these proper, affirmative steps.

Conclusion

The Biden administration's recent appointees to the FTC and DOJ have advocated for a stricter, more holistic approach to antitrust enforcement and have begun to target traditionally lawful activity. As a result, energy companies should expect an increase in enforcement actions. In anticipation of these changes, companies should take several steps to deter misconduct, including maintaining robust compliance programs and reporting procedures. By taking deliberate steps toward compliance, companies can both avoid and manage antitrust enforcement actions.

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Ed is an experienced antitrust lawyer and litigator with experience representing clients in jury and bench trials, appeals, arbitrations and regulatory investigations. Ed has cross-examined witnesses at trial and won multi-million dollar judgments and has also negotiated with the Department of Justice in criminal investigations that successfully concluded with no enforcement action recommended. In addition to litigating on behalf of clients and defending clients in antitrust and white-collar investigations, Ed provides counseling to clients on antitrust, anti-corruption and regulatory compliance.

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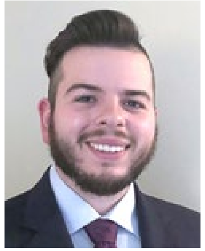

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By Colette D. Honorable, Jonathan L. Marcus and Keturah A. Brown

2021 at the CFTC and FERC

The independent federal agencies overseeing commodities and energy services markets have had a rather interesting year in the face of political transition. Reed Smith partners Jonathan Marcus and Colette Honorable discussed U.S. Commodity Futures Trading Commission (CFTC) and Federal Energy Regulatory Commission (FERC) action and regulatory developments affecting the commodities and energy markets.

Take*aways*

- The Biden administration nominated CFTC and FERC commissioners to fill vacant seats.
- The CFTC and FERC are both investigating possible misconduct during Winter Storm Uri.
- The CFTC and FERC have both created new units and offices in their agencies.

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Notable CFTC developments include: (1) the CFTC transition; (2) CFTC action on position limits; (3) investigations into the WTI negative price episode and gas markets during Winter Storm Uri; (4) the creation of the Climate Risk Unit (CRU); and (5) a quieter year for CFTC enforcement. Notable FERC developments include: (1) the FERC transition; (2) creation of new FERC offices and positions; (3) important appellate decisions; and (4) an active FERC enforcement year.

What is information blocking?

The Biden administration has nominated Acting Chairman Rostin Behnam to serve as chairman of the CFTC. A confirmation hearing was held before the Senate Agriculture Committee on October 27, 2021. The Biden administration has also nominated Democrats Kristen Johnson and Christy Goldsmith Romero to serve as CFTC commissioners, and the nominees are awaiting confirmation by the U.S. Senate. Johnson and Goldsmith Romero may not receive a confirmation hearing until the Biden administration nominates a Republican for the remaining vacancy. The CFTC currently has two commissioners, Acting Chairman Behnam and Commissioner Dawn Stump, a 1-1 split.

CFTC action on position limits

The CFTC implemented position limits on certain physical commodity futures and options contracts and economically equivalent swaps in an October 2020 final rule with a general compliance date of Jan. 1, 2022. However, limits on economically equivalent swaps and elimination of the risk management exemption will not take effect until Jan. 1, 2023. While there is speculation as to whether the anticipated Democratic-majority Commission would revisit the final rule to make it more restrictive, we view that as unlikely.

“The CFTC implemented position limits on certain physical commodity futures and options contracts and economically equivalent swaps in an October 2020 final rule with a general compliance date of Jan. 1, 2022.”

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> "As to be expected in light of the transition year, 2021 has been a relatively quiet year for the CFTC Division of Enforcement."

Investigations into WTI negative price episode and gas markets during Winter Storm Uri

In November 2020, the CFTC's Division of Market Oversight (DMO) and Office of the Chief Economist reported on the negative prices experienced in the WTI Crude Oil May 2020 Futures Contract. They identified a number of factors that contributed to the unusual episode but did not reach a conclusion as to the cause of the event.

With respect to Winter Storm Uri, DMO and the CFTC's Division of Clearing and Risk cited a variety of factors – including the isolation of the Texas energy market and the severity of the storm – that contributed to the extreme volatility in the natural gas spot market, in a June 2021 presentation to a CFTC advisory committee.

CFTC creates the Climate Risk Unit

Acting Chairman Behnam announced the establishment of a Climate Risk Unit (CRU) in March 2021. The CRU will focus on the role of derivatives in pricing and addressing climate-related risk and in transitioning to a low-carbon economy. Its goal is to ensure that new climate-related derivatives products and markets properly facilitate hedging, price discovery, and market transparency.

Quiet CFTC enforcement year

As to be expected in light of the transition year, 2021 has been a relatively quiet year for the CFTC Division of Enforcement. Significant cases involved price manipulation and misappropriation of confidential information in the energy markets. Based on resolutions of pending matters and new charges, the Enforcement Division will likely focus in the coming year on crypto operators and markets, defi platforms, swap data reporting, and swap dealer compliance and registration.

The FERC transition

FERC currently has four commissioners: Richard Glick (chair), James Danly, Allison Clements, and Mark Christie. The Biden administration nominated DC Public Service Chairman Willie Phillips to fill the vacant seat, and on Nov. 16, the U.S. Senate unanimously confirmed Phillips. The current 2-2 vote split should be eliminated once Phillips is sworn in.

Creation of new FERC offices

FERC has established the Office of Public Participation (OPP) to assist the public in participating in Commission proceedings. Elin Katz will serve as director of OPP, effective late November. Chairman Glick has appointed Montina Cole to the newly created position of senior counsel for environmental justice. In this role, Cole will work to ensure that environmental justice considerations are integrated into FERC decisions and actions.

Important appellate decisions

Several noteworthy appeals court decisions were issued this year. In *PennEast Pipeline Co., LLC v. New Jersey*, the U.S. Supreme Court held that the Natural Gas Act's condemnation provisions permit interstate pipelines to condemn land owned by public and private landowners. In *Vecinos Para el Bienestar de la Comunidad Costera v. FERC*, the D.C. Circuit reversed and remanded FERC orders granting certificates to construct and operate LNG facilities in Cameron County, Texas, for failure to adequately address greenhouse gas and environmental justice concerns. In *Environmental Defense Fund v. FERC*, the D.C. Circuit reversed and vacated FERC orders granting a certificate to Spire STL Pipeline for failure to adequately address issues regarding need for the project and possible self-dealing among affiliates.

Active FERC enforcement

The FERC Office of Enforcement (OE) has had a rather active year. FERC issued a May 20 Order to Show Cause directing GreenHat Energy, LLC and others to show cause as to why they should not be found to have engaged in market manipulation and be assessed $229 million in civil penalties. FERC has opened a Winter Storm investigation and is assessing potential market manipulation in the electric and natural gas markets. On Sept. 13, Janel Burdick ascended to OE director after serving as OE deputy director, and director for energy market oversight before that.

“The information subject to the information blocking rule will change over time as the industry prepares for full compliance.”

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Colette leads the firm’s energy regulatory group and is highly regarded in domestic and international energy sectors. She is a trusted advisor and counselor to several Fortune 500 energy companies, investor- owned utilities, and renewable energy, innovation and technology companies. Following a nomination by President Barack Obama and unanimous confirmation by the U.S. Senate, Colette served as a FERC Commissioner from 2015 to 2017.

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Jonathan advises clients on commodity, derivatives and digital asset regulation, and he litigates private suits involving the derivatives and energy markets in federal district and appellate courts. He also represents clients in government enforcement matters before the CFTC, the Securities and Exchange Commission and the FERC. Jonathan previously served as General Counsel of the CFTC and as an Assistant to the Solicitor General.

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