



Washington

watch by Stephen Barlas

Sewer Funding Bills Pass House

The House passed by a vote of 303-108 a re-authorization of the federal sewer grants program, but Democrats attached an amendment which would force non-federally funded projects to pay workers prevailing local wages prescribed by the Davis-Bacon Act. Tacking on the Davis-Bacon provision, which all House Republicans opposed, drew a veto threat from President Bush for the entire bill. The president also objected to the total funding, \$14 billion over four years.

A Republican effort to strip the Davis-Bacon language out of the bill failed 140-280, with all 140 "yeas" coming from Republicans. Despite that failure, 140 votes would be enough to sustain a Bush veto of the overall bill, since Democrats would not have the two thirds votes needed to override the veto.

Congress has been trying for a decade to reauthorize the Clean Water State Revolving Fund, which provides money to the states which is then used as capitalization grants to localities for sewer construction and repair. The Environmental Protection Agency and private and public water lobbying groups have all decried the funding gap between what cities and counties need to spend on deteriorating sewer systems, especially in the Midwest and Northeast, and the money those towns have to take care of the problems.

The House bill raises the authorization level for federal funding to \$3.5 billion a year. But an authorization level is simply the ceiling for federal funding. Actual funding is dictated by the appropriations committees, who forked over \$687 million for the CWSRF for the current fiscal year 2007. There is absolutely no chance Congress, in the current tight budget situation, would appropriate anything near \$3.5 billion for the CWSRF.

But higher authorization levels do send a message of sorts to the appropriations committees, as does the establishment of new grant programs with authorization levels, which was the case for a second bill the House passed. This one (H.R. 569) authorizes \$1.7 billion over five years in grants to help prevent "combined sewer overflows." These are sewers which carry both domestic sewage and industrial wastewater. Again, fiscal concerns hung over House consideration of the bill. Rep. Bill Pascrell (D-NJ), sponsor of the bill, originally set the authorization level at \$3 billion.

Standards of conduct lead to verbal fisticuffs

Transmission pipelines and their customers are engaging in a full scale tug of war over new standards of conduct for pipelines the

Federal Energy Regulatory Commission (FERC) proposed last January. These standards dictate what kinds of contacts pipelines can have with affiliates in the name of preventing abusive practices. Because of a federal court decision in 2006 setting aside expanded standards for gas pipelines FERC had adopted in Order 2004 in 2004; FERC proposed to essentially go back to the standards it put in place in 1998 as part of Order 497, with some tweaks.

But those tweaks have turned into major potential pains for both pipelines and gas suppliers. One of the outcomes of the 2006 decision by the U.S. Court of Appeals for the District of Columbia was to undercut language in Order 2004 where FERC extended application of the standards to "energy affiliates." In its January 2006 proposal, FERC goes back to the Order 497 language which talks about "marketing affiliates." If FERC defines that category narrowly, that will be fine with the interstate pipelines.

But gas suppliers are pushing hard for an expansive definition. Patricia Jagtiani, vice president of regulatory affairs for the Natural Gas Supply Association (NGSA), says FERC can keep some aspects of its Order 2004 definition without running afoul of the 2006 court decision. She says the standards should apply to marketing affiliates of affiliated transmission providers, affiliated asset managers that either directly hold capacity on the affiliated pipeline or who manage or control the capacity of a third party, and to affiliated power marketers. Jagtiani says that standards incorporating these principles "are within easy reach" even considering the 2006 decision by the U.S. Court of Appeals for the District of Columbia in a case brought by National Fuel Gas Supply Corporation.

In the case of asset managers, NGSA concedes that Order 497 already extends to pipelines and their affiliated asset managers. But Jagtiani alleges that the text of the proposed rule FERC issued in January "seems to imply" that the standards only apply to affiliated asset managers who manage or control the transmission capacity of a third party. She says they should also apply to asset managers who control capacity "in their own right."

Pipeline companies are taking the opposite position. David W. Reitz, deputy general counsel, National Fuel Gas Supply Corporation, says, "The National Fuel Companies are opposed to this change. The Commission has no evidence of affiliate abuse with regard to asset managers or other agents that do not already meet the definition."

The question of what constitutes a marketing affiliate has also produced a not so quiet storm. Jagtiani says FERC should make the definition broad enough

to include not only affiliates that conduct transportation transactions of the affiliated pipeline but also on any of the pipeline's other affiliated transmission providers. "Otherwise, a pipeline could pass information to a marketing affiliate of a sister pipeline where the sister pipeline's marketing affiliate does not hold capacity on the pipeline itself. Nothing would prevent the sister pipeline's marketing affiliate from acting as a conduit to pass that information to the pipeline's own marketing affiliate."

Pipeline customers want more financial information

The NGSA is also battling the transmission lines on another regulatory front at FERC; urging the Commission to force interstate pipelines to include more detailed information on their annual Form 2s, which customers use to determine whether a pipeline's rates are "just and reasonable," the point above which they are unlawful. The Commission is likely to expand Form 2 requirements. But the NGSA, this time manning the barricades with the Independent Petroleum Association of America, the American Public Gas Association and the Process Gas Consumers Group, wants FERC to require quite a bit of extra financial information.

The Industry Coalition, which is what the groups aligned with the NGSA call themselves, laid out 10 separate, additional pieces of data the pipelines should include on their annual Form 2s, and said that "the burden on pipelines to provide this additional detail is minimal compared to the benefit that regulators and consumers will obtain from the information."

The coalition very thoughtfully evaluated each of the 10 items for the level of additional burden supplying that piece of information would pose, and found seven to be either "extremely low" or "low" and three to be "moderate."

Naturally, the pipelines have a different take on whether they ought to put their accountants in overdrive. Keith A. Tiggelaar, director of regulatory affairs, Williston Basin Interstate Pipeline Company, says the information the pipelines currently submit on Form 2 and quarterly Form 3 Q is adequate to allow customers to "evaluate" pipeline rates. He adds, "If upon evaluation of a pipeline's Form 2 and/or Form 3 Q, questions are raised as to the reasonableness of the rates a pipeline is charging, the proper forum to provide the more specific information necessary to determine whether or not the pipeline's rates truly are just and reasonable is a Section 5 proceeding. The Commission's financial forms are not intended to be, nor should they become, a cost and revenue study that fully supports the rate making process." ■