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Federal Regulation of Natural Gas Production and Storage Expands in 2016

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In the last couple of months, the federal government has implemented two key efforts – one by regulation and one by law – of great importance to Arkansas’s natural gas producers. These laws are part of the broader trend nationwide of trying to enhance the nation’s energy infrastructure, which has been justified on a variety of grounds including national security, anti-terrorism, environmental protection, and supporting domestic employment. The declines in energy prices over the last few years may have depressed resource production in Arkansas for the time being, but it is critical that owners/operators be aware of these developments to ensure that when they do resume production, it is in compliance with standards that might not have been in effect when production was halted in 2012 or 2013.

The first of these became law on June 3, 2016, when the U.S. Environmental Protection Agency (“EPA”) released its final rules for reducing methane emissions from the oil and gas industry – Oil and Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources (the “2016 NSPS”). See 81 Fed. Reg. 35,942 (June 3, 2016). Although mainly focused on methane, the 2016 NSPS also seeks to reduce emissions of smog-forming volatile organic compounds (“VOCs”) and air toxics.

The 2016 NSPS rule contains several significant changes of interest to most producers. First, it requires that owners/operators of natural gas equipment meet methane emissions limits using technologies that are cost-effective and readily available. To a certain degree, this is an extension of an EPA rulemaking from 2012, and thus might be familiar to some owners/operators. However, the 2016 NSPS rule has broader application than the 2012 rule insofar as the new rule could reach hydraulically fractured oil wells that might contain natural gas, pneumatic pumps at well sites and gas production plants, and compressors and pneumatic controllers at transmission and storage facilities. Furthermore, the 2016 NSPS rule requires owners/operators to find and repair leaks (i.e., fugitive emissions) from two to four times per year depending on the location (e.g., well sites, gathering and boosting stations, transmission

compressor stations). Of course, the 2016 NSPS rule provides detailed requirements for how the foregoing must be done.

The 2016 NSPS rule also attempts to resolve the uncertainty regarding when emissions must be aggregated for adjacent facilities. The 2016 NSPS rule defines “adjacent” to mean equipment and activities that are under common control if they are located on the same site or are on sites that share equipment and are within a quarter of a mile of each other (although this does not apply to offshore operations). Under this new definition of “adjacent,” some owners/operators may find themselves subject to the rule when they had previously been exempt.

Later that same month, a second significant law was put into effect when President Obama signed the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (the PIPES Act), Pub. L. 114-183, reauthorizing the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) through 2019. The PIPES Act unanimously passed both the U.S. House of Representatives and the Senate. A key component of this reauthorization was a mandate that PHMSA promulgate rules for underground natural gas storage, largely in response to a leak in California in 2015, and represents another key regulatory consideration for Arkansas’s natural gas producers.

Although PHMSA and its federal predecessors have had the legal authority to mandate safety regulations for natural gas storage for decades, they generally have not done so. Instead, they have preferred to rely on the states to develop safety standards and encouraged the use of industry standards. A key problem with this approach is the only enforceable requirements were state-based, and those could not be applied out-of-state, and arguably could not be applied to the in-state part of facilities that were interstate. Section 12 of the PIPES Act was Congress’s response in June of 2016. It gives PHMSA two years to promulgate standards for underground natural gas storage facilities. The U.S Energy Information Administration estimates that Arkansas has approximately 21 million cubic feet of natural gas storage capacity in Arkansas, and while many states have far greater storage capacity, this still suggests the new storage rule will have application in Arkansas. Nonetheless, those Arkansas entities that will be affected by this rulemaking should monitor it closely and consider whether to submit comments to PHMSA to ensure the rule reflects the experience and needs of the Arkansas entities that will be regulated under the new rule.

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