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Energy Industry Update

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President's Executive Order on Grid Security Creates Peril and Uncertainty for US Power Companies

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The security of the bulk-power system has long been an issue of deep concern in the US. In purported response to these concerns, on May 1, 2020, President Trump issued an Executive Order on Securing the United States Bulk-Power System (the Executive Order), which prohibits any acquisition, importation, transfer or installation of any US bulk-power system electric equipment where the transaction involves any property in which any foreign country or foreign national has any interest (including through supply contracts), and where the Secretary of Energy has determined that such transaction poses an undue risk of sabotage, catastrophic effects or risk to national security. The Secretary of Energy, in consultation with the heads of other agencies as appropriate, may design or negotiate mitigation measures, which may serve as a precondition to the approval of certain transactions or of a class of transactions, and establish and publish prequalification criteria and procedures. However, the lack of clarity in the order has raised serious concerns, not only among foreign suppliers, but also among US energy companies that use foreign-sourced equipment in their businesses. In our article, we consider the implications for the US power industry in general, as well as the political, national security and trade implications of this Executive Order. Read full article here.

Energy Sector Interests in Potential CARES 2.0/Infrastructure Legislation

By Sarah Vilms, (Principal, Washington, DC, sarah.vilms@squirepb.com) and David Schnittger (Partner, Washington DC, david.schnittger@squirepb.com)

The energy sector is seeking to be included and eligible for some possible relief in the anticipated CARES 2.0/ Infrastructure phase of coronavirus legislation. The renewable energy industry is largely looking for safe harbor, direct pay and investment tax credit (ITC) accommodations to account for what will amount to a lost year due to the COVID-19 crisis. The carbon capture coalition is seeking an extension and direct pay for the 45 Q tax credit, which would restore one of two years already lost to ongoing delays in the US Department of Treasury's release of taxpayer guidance from the IRS. The nuclear industry is pursuing grants and regulatory fee relief, while the coal lobby is interested in suspended and reduced royalties, taxes and fees on mining. Large oil and gas associations, such as the American Petroleum Institute (API) have asked for the Trump Administration and Congress to relax certain environmental, inspection and permitting requirements from several federal agencies. The American Exploration and Production Council has said that while their members are not looking for a "government bailout," those companies want to be made eligible for loan programs. Legislatively, it is possible Congress could look to negotiate an "all of the above" balance of energy sector requests as a whole, as each part of the industry has suffered from the COVID-19 crisis.

Emergency Loan Program for US Oil Companies Expected to Be Introduced

By Sarah Vilms, (Principal, Washington, DC, sarah.vilms@squirepb.com) and David Schnittger (Partner, Washington DC, david.schnittger@squirepb.com)

Treasury Secretary Steve Mnuchin and Energy Secretary Dan Brouillette have indicated they will introduce an emergency loan program for oil companies in the near future. The plan will likely include bridge loans and grant emergency lending authority through the Federal Reserve aimed at small to medium size companies. The new loans would target oil companies who need more flexibility in using the financial assistance than is allowed through Main Street lending programs, after the Federal Reserve announced on April 30 that it would be allowing larger companies to participate in the program. There are also indications the administration may be looking to expand the Strategic Petroleum Reserve by buying up undrilled oil as financial assistance to oil companies.

Section 232 Investigation Energy Industry Impact

By Sarah Vilms, (Principal, Washington, DC, sarah.vilms@squirepb.com) and Ludmilla Kasulke (Senior Associate, Washington DC, ludmilla.kasulke@squirepb.com)

On Monday, May 4, 2020, Secretary of Commerce Wilbur Ross announced that the US Department of Commerce (DOC) will begin an investigation into whether laminations for stacked cores for incorporation into transformers, stacked and wound cores for incorporation into transformers, electrical transformers and transformer regulators are being imported in quantities or under circumstances as to threaten national security. This investigation was initiated under Section 232 of the Trade Expansion Act of 1962, as amended, which serves as the basis for existing tariffs on certain steel and aluminum goods, and previous investigations into uranium, titanium sponge and auto/auto parts imports.

Since the imposition of tariffs on select steel products under Section 232 in 2018, some domestic stakeholders have urged the administration to expand the action to cover more categories of grain oriented electrical steel (GOES), a key component of these goods. However, broader action, as described in the investigation, could sweep in a large range of power electronics that could have a significant impact on the energy industry, as well as others.

In the coming days, the DOC's Bureau of Industry and Security is expected to issue a request for public comments in the Federal Register. The DOC must issue a report and recommended actions to President Trump within 270 days. President Trump will have 90 days from then to decide whether to take any action to limit imports, including whether to impose tariffs or enact a quota limiting imports.

ESO Raises Grid Code Modification Proposal Seeking Emergency Powers to Cut Off Embedded Generation

By Paul Brennan (Consultant, Birmingham, paul.brennan@squirepb.com) and Rob Broom (Associate, London, robert.broom@squirepb.com)

Around the world, electricity systems are experiencing unprecedented changes in demand patterns as a result of restrictions on movement and business activity because of lockdowns imposed in response to the coronavirus disease 2019 (COVID-19) pandemic. In this client alert, our Energy & Natural Resources Practice team looks at steps being proposed in response to these changes in the UK, and considers some of the implications of the crisis for electricity generators and investors both in the UK and internationally. Read full article here.

Invoking Force Majeure Due to COVID-19 in Energy and Other Contracts Governed by English Law

By Paul Brennan (Consultant, Birmingham, paul.brennan@squirepb.com) and Rob Broom (Associate, London, robert.broom@squirepb.com)

With the current world-wide coronavirus disease 2019 (COVID-19) situation, where parties are finding it increasingly difficult, if not impossible, to perform their obligations under energy and other contracts pre-dating these extraordinary and turbulent times, our Energy & Natural Resources Practice team takes a closer look at force majeure and other relief mechanisms potentially available under English law. Read full article here.

BEIS Seeks Views on Relaxing Capacity Market Rules in Response to COVID-19 Pandemic

By Paul Brennan (Consultant, Birmingham, paul.brennan@squirepb.com) and Rob Broom (Associate, London, robert.broom@squirepb.com)

On 24 April 2020, the Department for Business, Energy & Industrial Strategy (BEIS) published a Consultation seeking industry views to relax certain Capacity Market obligations and deadlines, reduce the burden and minimise terminations of Capacity Market Agreements arising from the COVID-19 pandemic or the restrictions imposed by the government to tackle it. In this alert, our Energy & Natural Resources Practice team takes a closer look at the proposed changes. Read full article here.

Gas and LNG Alert: All Hands to Contract Management Stations

By Maximilian Rockall (Partner, London, max.rockall@squirepb.com), Ben Holland (Partner, London, ben.holland@squirepb.com) and Tim Flamank (Associate, London, tim.flamank@squirepb.com)

Regardless of whether certain countries have (or have not) passed the "peak" of the coronavirus disease 2019 (COVID-19) outbreak, other LNG market forces remain; possible second or third waves of the virus cannot be ruled out and the impact of the April 2020 OPEC+ deal remains to be seen. Even without the virus, parties to LNG contracts need to maintain a solid grasp of the contractual tools at their disposal. In this alert, our team explores contractual management tools that may be available in a highly changeable LNG market, and some common issues associated with them. These tools may provide leverage to parties seeking to recast (or preserve) the contractual bargains contained in their SPA portfolios. Read full article here.

How Can the Oil and Gas Industry Prepare to Deal With the Impact of COVID-19?

By Peter Stewart (Partner, London, peter.stewart@squirepb.com) and Rob Broom (Associate, London, robert.broom@squirepb.com)

Energy & Natural Resources Practice consider the impact of the coronavirus disease 2019 (COVID-19) pandemic on the oil and gas industry. The team provides an in-depth analysis of the current low oil price climate and discusses legal considerations relevant to the oil and gas industry, including force majeure, production sharing agreements, and health, safety and the environment. Read full article here.

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