

[\(/\)](#)[Log Out \(/user/logout\)](/user/logout)[My Account \(/user/profile\)](/user/profile)

Lawyers, Industry Debate Path for Hydrogen Regulation

Natural Gas Act, Interstate Commerce Act or New Law?



Joseph Hicks, Venable, speaks as (from left) Michael Diamond, Van Ness Feldman; moderator Marcia Hook, Kirkland & Ellis and Amanda Mertens Campbell, The Williams Companies, listen. | © RTO Insider LLC

Oct 16, 2022 | Rich Heidorn Jr. (</authors/8-rich-heidorn-jr>)

WASHINGTON — To be a natural gas, or not to be a natural gas? That was the question at the Energy Bar Association’s debate Wednesday on how hydrogen — the “Swiss Army knife” of decarbonization — should be regulated.

Van Ness Feldman partner Michael Diamond told the EBA's Mid-Year Energy Forum that hydrogen should be regulated under the Natural Gas Act, along with the fuel it will compete with. Venable counsel Joseph Hicks said it would be better for the nascent industry to be regulated under the "less onerous" Interstate Commerce Act (ICA).



Amanda Mertens Campbell, The Williams Companies | © RTO Insider LLC

Amanda Mertens Campbell, vice president of government affairs and community outreach for The Williams Companies (NYSE:WMB), said additional federal regulation would be counterproductive now. Campbell said that although hydrogen blended with natural gas is covered by the NGA, all-hydrogen "purity" pipelines are not currently federally regulated.

Williams, the largest operator of natural gas infrastructure in the U.S., has pledged to reduce its greenhouse gas emissions by 56% from 2005 levels by 2030 and reach net zero by 2050. The federal government is betting that hydrogen can decarbonize heavy industry, freight shipping and air travel.

(See *DOE Opens Solicitation for \$7B in Hydrogen Hubs Funding*.)

(<https://www.rtoinsider.com/articles/30836-doe-opens-solicitation-hydrogen-hubs-funding>.)

"Nobody's [net-zero] vision for 2050 can exist without introducing and accommodating a hydrogen economy," said Campbell.

The Case for the Natural Gas Act

The NGA governs gases that can be used for energy, while the ICA covers oil pipelines, which also transport gasoline, diesel and jet fuel.



Michael Diamond, Van Ness Feldman | © RTO Insider LLC

Diamond said the NGA regulates natural gas and any blend of natural and artificial gas, which he said *FERC* (*FERC*) has defined as gas "created by the agency of man or the product of some kind of engineering process."

"Hydrogen fits pretty neatly into this definition," said Diamond. Currently, most hydrogen is manufactured through steam methane reforming, in which high heat and high pressure is used to strip the hydrogen molecule (H_2) from methane (CH_4). "That fits very neatly into this idea that it's artificial. The same really goes for hydrogen created from water through electrolysis: splitting the molecular structure of water and pulling the hydrogen from the oxygen."

Diamond cited a *letter* (<https://elibrary.ferc.gov/eLibrary/filedownload?fileid=5393a9f3-e7fe-cfa6-9780-7cc1fdc00000>) that FERC Chairman Richard Glick wrote to U.S. Sen. Martin Heinrich (D-N.M.) in October saying the commission has the authority under the NGA over hydrogen blending with natural gas in

interstate pipelines. Because FERC recently approved the abandonment of the natural gas storage facility to be used for hydrogen, Diamond said, the “only logical conclusion” is that the commission considers hydrogen as artificial gas.

He said FERC could assert jurisdiction over hydrogen as a natural gas under a more expansive reading of the word “natural,” as hydrogen is a naturally occurring element. Sen. Joe Manchin’s (D-W.Va.) legislation to ease permitting of pipelines and electric transmission would have amended the definition of natural gas in the NGA to include hydrogen. (See *Manchin Permitting Package Cut from Spending Bill* (<https://www.rtoinsider.com/articles/30870-manchin-permitting-package-cut-spending-bill>).

Under either definition, Diamond said, the NGA is the right law for hydrogen. “Hydrogen ... competes directly with natural gas. It is going to be a direct substitute for natural gas. ... So there’s a lot of good reasons to regulate hydrogen under the same statute that natural gas is,” he said.

Diamond said the industry need not fear FERC’s oversight because the agency has flexibility under the NGA to apply light-handed regulation, as it has done with LNG terminals.

The Case for the Interstate Commerce Act



Joseph R. Hicks, Venable | © RTO Insider LLC

Hicks countered that hydrogen is not an artificial gas. “The courts have looked at this multiple times. They’ve never said that hydrogen is an artificial gas; there’s no precedent to support that. There the test appears to be about where the origin of the gas comes from, rather than its composition,” he said.

Hicks said the ICA is “far less onerous in its requirements” than the NGA, with no certifications of pipelines or affiliate standards of conduct. NGA jurisdiction could also require corporate reorganization or revision of existing long-term contracts, he said.

The ICA would aid in the financing of hydrogen pipelines. “But the ICA is hands-off other than rates and recordkeeping and making sure that it’s treating people equally; that there’s antidiscrimination provisions,” he said.

“If a developer seeks to construct a hydrogen pipeline between two points already served by a methane natural gas pipeline, [and] hydrogen is now natural gas, the FERC has to make some type of determination about whether it’s going to allow two pipelines transporting natural gas to the same destination and has to approve one or the other.”

Hicks acknowledged that the ICA doesn’t provide the eminent domain authority that comes with certification under the NGA. “But I think that’s really a double-edged sword, considering how long it takes for pipelines to be certified. And there are plenty of petroleum products pipelines that have been built and operate in this country without siting authority.”

Campbell agreed. “Eminent domain is not worth what it used to be. And so if we are trying to incent interstate construction of either purity or blended pipelines, we should think about the current situation, which is where you need state permits and there’s no federal regulator. Would that not allow more [pipelines] to be constructed?”

Manchin Permitting Bill

If hydrogen were regulated as natural gas, Hicks said, it should be accompanied by provisions exempting existing hydrogen transportation assets, such as hydrogen-only pipelines in the Gulf Coast and spur lines that deliver hydrogen to refineries.

“My understanding is that Sen. Manchin’s energy adviser wrote an article arguing that hydrogen should be regulated by the NGA,” said Hicks. “I don’t know honestly if it was fully thought out about what the implications of doing this were. My sense was that it wasn’t, because of the possible implications to industry.”

Williams also opposed the provision. “We thought it was premature to add that language to the permitting reform bill, because it did not fully flesh out all of the unintended consequences,” Campbell said.

Short-term Thinking?

Diamond cautioned against what he called “short-term thinking” focused on existing hydrogen pipelines. “Yeah, bringing them under the NGA would impose some uncertainty during the time that FERC works out how it’s going to regulate,” he said. “But we’re talking about the hydrogen industry for the next 50 years. So we’re trying to lay a sustainable groundwork for something that could be a major source of energy, not just an input into oil production in the Gulf.”

Responded Hicks: “I would say if you’re looking for a ... statute that has been successfully administered for a long period of time, that would [point] you to the ICA, which has been around since the 1880s.

“It’s a weighing of priorities,” he added. “Do we want this industry to get off the ground very quickly, such that we mitigate climate change issues quickly? Or do you want a situation where it takes time to integrate this industry into the existing regulations?”

Hicks said he could also support a new law for hydrogen “that kind of takes the best of both [ICA and NGA] worlds.”

“But right now, I think that — if the goal is to take the money that has been laid on the table by the government in this recent legislation and run with it as quickly as possible to decarbonize our economy — I think light regulation is better.”

‘View from the Ground’

Campbell offered Williams' "view from the ground," saying the company is investing in hubs where it can mostly use existing infrastructure.

"It's really hard to build pipelines ... and so a hydrogen strategy does not exist without repurposing existing infrastructure, because those are critical pathways into population centers," she said. "The real opportunity in 2022 and the foreseeable future is decarbonizing the gas stream through blending. And that's clearly under Natural Gas Act regulation and jurisdiction."

Because hydrogen has one-third of the energy content of methane, "in order to [replace] our methane with hydrogen, we will need three times as much infrastructure," Campbell said. "So that should be part of the consideration when determining who should regulate."

"We think we have time as this purity economy develops to be thoughtful; to weigh the pros and cons; to think through all of the potential unintended consequences of adding a federal regulator on top of an industry that [now] only needs state permits," she said. "To add this layer of regulation without first thinking through all the pros and cons ... is premature."

INDUSTRIAL DECARBONIZATION (/TOPICS/889-INDUSTRIAL-DECARBONIZATION)

HYDROGEN (/TOPICS/969-HYDROGEN)

NATURAL GAS (/TOPICS/887-NATURAL-GAS)

FERC (/TOPICS/892-FERC)


CONGRESS (/TOPICS/893-CONGRESS)


FERC & FEDERAL (/TOPICS/278-FERC-FEDERAL)

NATURAL GAS (/TOPICS/342-NATURAL-GAS)


CONFERENCE COVERAGE (/TOPICS/353-CONFERENCE-COVERAGE)

KEYWORDS EBA MID-YEAR FORUM (/KEYWORDS/8155-EBA-MID-YEAR-FORUM) ENERGY BAR ASSOCIATION (EBA) (/KEYWORDS/85-ENERGY-BAR-ASSOCIATION-EBA) FEDERAL ENERGY REGULATORY COMMISSION (FERC) (/KEYWORDS/959-FEDERAL-ENERGY-REGULATORY-COMMISSION-FERC) HYDROGEN PIPELINES (/KEYWORDS/6650-HYDROGEN-PIPELINES) HYDROGEN REGULATION (/KEYWORDS/8156-HYDROGEN-REGULATION) INTERSTATE COMMERCE ACT (ICA) (/KEYWORDS/8151-INTERSTATE-COMMERCE-ACT-ICA) NATURAL GAS ACT (NGA) (/KEYWORDS/1375-NATURAL-GAS-ACT-NGA) NATURAL GAS PIPELINES (/KEYWORDS/1377-NATURAL-GAS-PIPELINES) THE WILLIAMS COMPANIES (/KEYWORDS/8152-THE-WILLIAMS-COMPANIES)

 (<http://www.facebook.com/sharer/sharer.php?u=https://www.rtoinsider.com/articles/30955-lawyers-industry-debate-path-hydrogen-regulation>)

 (<https://twitter.com/intent/tweet?url=https://www.rtoinsider.com/articles/30955-lawyers-industry-debate-path-hydrogen-regulation&text=Lawyers%2C%20Industry%20Debate%20Path%20for%20Hydrogen%20Regulation>)

 (<https://www.reddit.com/submit?url=https://www.rtoinsider.com/articles/30955-lawyers-industry-debate-path-hydrogen-regulation>)

 (<https://www.linkedin.com/cws/share?url=https://www.rtoinsider.com/articles/30955-lawyers-industry-debate-path-hydrogen-regulation>)

  (/articles/print/30955-lawyers-industry-debate-path-hydrogen-regulation)