



PROCESS  
GAS  
CONSUMERS  
GROUP  
[www.pgcg.com](http://www.pgcg.com)

Volume 3  
Issue 5  
July 11, 2016

## REGULATORY UPDATE

Section 5 Cases at FERC Reach Settlements – PRIVILEGED AND CONFIDENTIAL: as a reminder, on January 21, FERC initiated 4 new Section 5 proceedings against the following pipelines: Columbia Gulf Transmission ("CGT"), Iroquois Gas Transmission System ("Iroquois") Empire Pipeline, Inc. ("Empire"), and Tuscarora Gas Transmission Company ("Tuscarora"). PGC intervened in each of these proceedings. FERC ordered each pipeline to file a full cost and revenue study by April 5, 2016. You can view excerpts from the pipeline's cost and revenue studies [here](#), which show each pipeline's claimed cost of service, return, and asserted under or over-recovery (Columbia and Empire showed an under-recovery, while Tuscarora and Iroquois showed an over-recovery) – full copies of the cost and revenue studies are hyperlinked below for each individual pipeline.

In the time since the PGC membership meeting in June, all of the cases have settled. The settlements provide significant rate relief for shippers on each pipeline and contain requirements that the pipeline must file either an NGA Section 4 rate case or a cost and revenue study within a specified period.

**→ Because the settlements have not yet been filed with FERC, the summaries below of the Section 5 settlements are privileged and confidential, and subject to FERC's Rule 602. Please do not forward these summaries outside of your company.**

- Columbia Gulf Transmission (Docket No. RP16-302): On June 2<sup>nd</sup>, the intervenors reached a settlement with the pipeline. The settlement adopts a 40/100ths of a cent reduction off of the current daily maximum FTS-1 recourse rate, effective July 1. The settlement provides for (1) a moratorium on the filing of a rate case through June 30, 2019 and (2) a requirement that the pipeline must file a general NGA Section 4 rate case no later than January 31, 2020 (unless Columbia is subjected to another Section 5 proceeding).
  - REMINDER: In FERC's order establishing the Section 5 proceeding, it noted that Commission Staff estimated CGT's return on equity for 2013 was 17.3% and 18.2% in 2014 using Form 2 data CGT filed. You can view the Commission's order establishing the Section 5 proceeding [here](#). CGT filed a [request for rehearing](#) on February 19<sup>th</sup>, which the [Commission denied](#) on March 31<sup>st</sup>. CGT filed its [cost and revenue study](#) on April 5.
- Empire (Docket No. RP16-300): In May, the intervenors reached a settlement with the pipeline. Pursuant to the settlement, customers on the pipeline will benefit from several rate-step downs, including: an initial 11% decrease to current rates, effective July 1, 2016; a 21% decrease to current rates effective October 1, 2016; and a 26% decrease to current rates effective October 1, 2017. The pipeline will implement a revenue sharing mechanism, effective

December 1, 2016, where Empire will share 30% of revenues above \$73.5M, 40% over \$78M, and 50% over \$80M. The pipeline must file a section 4 rate case by July 1, 2021.

- REMINDER: In FERC's order establishing the Section 5 proceeding, it noted that Commission Staff estimated Empire's return on equity in 2013 was 15.8%, and in 2014 was 20.2% using Form 2 data Empire filed. You can view the Commission's order establishing the Section 5 proceeding [here](#). Empire filed a [request for rehearing](#) on February 22<sup>nd</sup> which the [Commission denied](#) on March 31. Iroquois filed its [cost and revenue study](#) on April 5.
- Iroquois (Docket No. RP16-301): In late June, a settlement was reached with Iroquois. Under the settlement, customers on Iroquois will benefit from a 3-phase rate step-down over a 3-year period. The first step-down will occur no later than September 1, 2016, the second step-down will occur in 2017, and the final step-down will be effective in 2018. The rate decreases will vary by zone over the step-down period. Rate decreases range from 6% to 35% of current rates. The pipeline is precluded from filing a cost recovery mechanism / tracker pursuant to FERC's policy statement announced last year. Finally, Iroquois is required to provide participants a cost and revenue study no later than September 1, 2022, so that shippers and the pipeline have an opportunity to achieve a pre-filing settlement. If a settlement is not reached within 30 days, Iroquois is required to file with FERC by August 1, 2023.
  - REMINDER: In FERC's order establishing the Section 5 proceeding, it noted that Commission Staff estimated Iroquois's return on equity in 2013 was 16.2%, and in 2014 was 16.3% using Form 2 data Iroquois filed. You can view the Commission's order establishing the Section 5 proceeding [here](#). Iroquois filed its [cost and revenue study](#) on April 5.
- Tuscarora (Docket No. RP16-299): In late June, a settlement was reached with Tuscarora. Tuscarora agreed to reduce its reservation rates by 16.7% for the first three years following the settlement effective date (phase 1). The following three years (phase 2), the reservation rate will reduce by approximately 23% from current rates. The pipeline agreed to a refund floor applicable to the next Section 4 rate case equal to the 2<sup>nd</sup> phase rate step-down (*i.e.* the reservation rates that are 23% lower than the pipeline's current rates). Tuscarora must file a Section 4 rate case no later than 6 years following the settlement's effective date. Finally, the settlement will provide that neither the settlement nor the settlement rates create a presumption of justness and reasonableness of Tuscarora's rates with respect to the Commission's cost recovery mechanism policy statement. Thus, the pipeline cannot rely upon this settlement as a basis to meet the Commission's requirement that a pipeline must show its existing rates are just and reasonable before it can implement a cost recovery mechanism.
  - REMINDER: In FERC's order establishing the Section 5 proceeding, it noted that Commission Staff estimated Tuscarora's return on equity as 23.6% for 2013 and 24.9% in 2014 using the Form 2 data Tuscarora filed. You can view the Commission's order establishing the Section 5 proceeding [here](#). The ALJ held a prehearing conference in this matter on February 11 and [established a procedural schedule](#). Tuscarora [filed a request for rehearing](#) of the Commission's decision to bring a Section 5 action on February 22<sup>nd</sup>, which the [Commission denied](#) on March 31. Tuscarora filed its [cost and revenue study](#) on April 5.

Court of Appeals Finds No Fault in FERC Review of LNG Projects: On June 28, the U.S. Court of Appeals for the D.C. Circuit issued two orders finding that while environmental groups had standing to bring

their petitions to court, their challenges to the FERC orders approving the Freeport LNG export project and an expansion at the Sabine Pass export terminal mostly "fail on the merits." The environmental groups had argued that LNG exports would encourage more domestic gas production and in so doing increase environmental effects, but the court found FERC reasonably explained that the link between exports and production was "too attenuated to be weighed in its particular [National Environmental Policy Act] analysis." The court also rejected the groups' call for "a nationwide analysis that included applications for several other LNG export terminals that were pending or had already been granted across the United States." The Court determined that a " NEPA cumulative-impact analysis need only consider the 'effect of the current project along with any other past, present or likely future actions in the same geographic area' as the project under review."

President Obama Signs Pipeline Safety Act Reauthorization into Law: On June 22<sup>nd</sup>, President Obama signed a bill to renew the federal government's pipelines safety program, giving regulators new emergency authorities. The "Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016", or PIPES Act, reauthorizes the Pipeline and Hazardous Materials Safety Administration's ("PHMSA") oil and gas pipeline programs through 2019, with a few new mandates for the agency. The law gives the agency emergency-order authority – a power intended to allow the agency to quickly instate nationwide regulations to address imminent safety concerns. The reauthorization gives PHMSA specific factors to consider when weighing whether to issue an emergency order: public health and safety, the economy and national security, and pipeline reliability and service continuity. PHMSA is required, within 60 days, to issue temporary rules related to the authority and about nine months to issue final regulations. The strong congressional interest in emergency-order authority came up amid Southern California Gas Co.'s multi-month Aliso Canyon natural gas storage leak, which lasted from October 2015 to February 2016. The dearth of standards for underground storage prompted many stakeholders to call on PHMSA to act quickly to improve oversight. The law requires PHMSA to update several safety regulations, including those for underground natural gas storage. Beyond those mandates, the bill instructs PHMSA to continue to work on a large set of mandates from the 2011 pipeline safety law, many of which the agency has not completed. You can read the new law [here](#).

D.C. Circuit Questions FERC's Income Tax Allowance Policy: On July 1, the U.S. Court of Appeals for the D.C. Circuit issued an order that calls into question long-standing FERC policy and precedent that allows regulated companies organized as pass-through entities for income tax purposes to include an allowance on income taxes in their rates. The Court determined FERC acted arbitrarily and capriciously when it permitted SFPP, L.P. (SFPP), an interstate petroleum products pipeline, to include an income tax allowance in its rates. FERC policy, announced in 2005, permits partnerships or similar pass-through entities that hold interests in a regulated public utility, including oil and natural gas pipelines, to earn an income tax allowance if the utility can demonstrate that its eventual owner or owners have an actual or potential income tax liability payable on the income earned on the assets held by the pass-through regulated utility. The court remanded the case to FERC to give the agency an opportunity to provide a reasoned basis for its decision on income tax allowances for partnership pipelines. The court noted that FERC had previously considered the possibility of setting rates based on pretax returns and eliminating the income tax allowance. In light of the large number of jurisdictional entities organized as pass-through entities, this will be a major issue for FERC to address. You can read the court's order [here](#).

Industry Study Finds PHMSA Proposed Pipeline Safety Rule Will Cost 56 Times the Federal Estimate: An ICF International Study, commissioned by the American Petroleum Institute, found that the rule proposal could cost the industry \$33.4 billion, with benefits ranging from \$306M to \$568M. The cost

estimate is about 56 times the PHMSA's regulatory impact analysis estimates of roughly \$597 million in costs. PHMSA also estimated \$3.2 billion to \$3.7 billion in benefits. You can read the ICF study [here](#).

## CLEAN POWER PLAN UPDATE

Court Orders En Banc Review of CPP and Delays Oral Arguments: On May 16<sup>th</sup>, the U.S. Court of Appeals for the D.C. Circuit ordered that it would delay oral arguments originally scheduled for June 2<sup>nd</sup> until September 27<sup>th</sup> and ordered a full, en banc review. Attorneys working on the case call this order "extraordinary," as the court has never before decided for itself to set an issue before the entire slate of judges before a 3-member panel has heard the case and no one on either side of the litigation requested it. This delay alters the potential timelines for Supreme Court review. If the D.C. Circuit issues its decision before January 2017, the losing party will likely petition the Supreme Court for review during the 2016-2017 term, with a decision anticipated by June 2017. However, if the D.C. Circuit does not issue its decision until later in 2017, after the Supreme Court's typical mid-January cut-off for review in that term, the Supreme Court likely will not hear the case until the 2017-2018 term, with a decision coming as late as June 2018. The timing for filling Justice Scalia's vacancy on the Supreme Court could also affect the Court's timing for granting *certiorari* in the case, as the Supreme Court is making an effort to avoid 4-4 decisions.

## LEGISLATIVE UPDATE

Energy Legislation Stalled: Broad energy legislation, known as the "Energy Policy Modernization Act," or S.2012, has been stalled for several months, after the Senate passed the bill with strong bipartisan support on April 20 and the House subsequently added numerous provisions to the bill that angered Democrats. The House also added to S.2012 its own energy legislation, which has much less bipartisan support than the Senate's energy bill. The House voted May 25 to advance the expanded bill to a bicameral conference committee and has appointed conferees, but the Senate has not yet named its own conferees or set a schedule to work out differences in the legislation. Both the Senate and House bills contain provisions to expedite LNG export and natural gas pipeline permitting, foster development of distributed generation and enhance electric reliability, among other provisions. However, the White House has threatened to veto the House legislation and several bills that the House attached to the energy package in May over environmental and other concerns. You can read the House version of S.2012 [here](#).

## ON THE HORIZON

- **Given that the newsletter covers all pertinent updates for this month, the July 15, 2016 membership call is cancelled. A calendar cancellation notice will be sent shortly.**
- Next PGC Meeting: August 19, 2016, 888-857-7121; passcode: 202 661 7607.
- Planning Ahead: PGC's next in-person membership meeting will be held September 21st in D.C., and an all-member dinner will be held September 20th. Stay tuned for more details!
- Next Commission Meeting: September 22, 2016

## CONTACT INFORMATION

If you have any questions, please contact Andrea Chambers at 202-661-7607 or via e-mail [here](#), or Katie Leesman at 202-661-2266 or via e-mail [here](#). If you need access to the PGC member portion of the website, contact Trinna Barner via e-mail [here](#).