



PROCESS
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GROUP

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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. 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 Iroquois settlement has not yet been filed with FERC, the summary below of that settlement is privileged and confidential, and subject to FERC's Rule 602. Please do not forward that summary outside of your company.**

- Columbia Gulf Transmission (Docket No. RP16-302): On July 26, 2016, Columbia filed a settlement with the Commission that provides lower rates effective July 1, 2016, which will be implemented through a refund made 60 days after the settlement is effective. For a copy of the settlement click [here](#). The settlement adopts a 40/100ths of a cent reduction off of the current daily maximum FTS-1 recourse rate. 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.
- Empire (Docket No. RP16-300): On July 22, 2016, Empire filed a settlement with the Commission. To view a copy of the settlement click [here](#). Earlier, on June 16, 2016, the Chief ALJ issued an order allowing the settlement rates to go into effect on an interim basis effective July 1, 2016, 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.

- 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.

- Tuscarora (Docket No. RP16-299): On July 15, 2016, Tuscarora filed a settlement with the Commission that provides lower rates effective August 1, 2016. To view a copy of the settlement click [here](#). On August 1, 2016, Tuscarora filed to place the Phase I settlement rates into effect that day. Pursuant to the settlement, Tuscarora reduced 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 2nd 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. The Presiding Administrative Law Judge issued an order certifying the uncontested settlement to the Commission for approval.
 - 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.

ENFORCEMENT UPDATE

District Court Requires FERC to undergo Full Civil Trial to Enforce Penalty: In a ruling that could affect other FERC enforcement actions, a Massachusetts federal judge ruled that the FERC will have to undergo a typical civil proceeding, including a jury trial if necessary, in order to enforce a \$5 million market manipulation penalty against Maxim Power. In holding that Maxim Power is entitled to a full adversarial civil proceeding, the judge refused the Commission's request to limit the evidence to the administrative record. FERC is seeking to enforce the penalty it imposed on Maxim Power Corp. when it found that the company bid into the New England wholesale power market and was paid the higher price for producing power because it claimed to be burning oil while the company was really burning cheaper natural gas. The judge found that the company was not afforded due process in the FERC proceedings because it was not allowed to seek discovery or depose witnesses who were interviewed by FERC, gain any insight into the presentation of the case made by FERC's enforcement staff to the

Commissioners during the investigative phase, or present their own witnesses. However, the judge did try to prevent duplication of the discovery work FERC had done during the administrative proceedings. The judge also denied Maxim Power's motion to dismiss the case. Although he denied the Commission's request to have the court rely purely on the administrative record when reaching a decision, he did praise the agency for certain measures it took to be fair towards the parties, but held that FERC's decision-making process must be sufficient to withstand judicial review. The citation to the proceeding before the District Court is Federal Energy Regulatory Commission v. Maxim Power Corp., et al., Civil No. 15-30113-MGM (D. Mass.).

Commission upholds ALJ Decision in BP Enforcement Action. On July 11th, FERC upheld the ALJ's decision that BP manipulated natural gas prices in 2008 by trading next-day, fixed price gas at the Houston Ship Channel with the aim of pushing down Platts' *Gas Daily* index prices allegedly to benefit large financial spread positions and ordered BP to pay civil penalties of nearly \$20.2 million and disgorge unjust profits of \$207,169. To view the order click [here](#).

JUDICIAL AND AGENCY UPDATES

PGC Joins National Association of Manufacturers and Other Associations as Amicus in Constitution Case: PGC joined in the Amicus Brief with NAM , NGSAA, AF&PA, INGAA and other trade associations that are concerned by the New York Department of Environmental Conservation's denial of a water permit which effectively blocked the construction of the Constitution Pipeline after the pipeline project had received certificate authority from FERC. The Amici urged the court to apply heightened scrutiny in its review of state actions denying permits of projects where FERC has granted the certificate based upon its finding that construction of the pipeline is in the public interest and where FERC has been designated as the lead environmental agency under the National Environmental Policy Act ("NEPA"). Specifically, Amici urged the court to scrutinize the state agency's denial of the water permit to verify that the state's actions are consistent with Section 401 of the Clean Water Act and not simply an effort to end run around a FERC certificate that the state opposes on other policy grounds. The citation to the proceeding in the Second Circuit is Constitution Pipeline Co., LLC v. N.Y. State Dep't of Env'tl. Conservation, No. 16-1568 (2d. Cir.)

Federal Agencies Must Consider Climate Impacts: On August 2, 2016, the White House Council on Environmental Quality (CEQ) issued its final guidance for Federal agencies requiring consideration of the impacts on climate change in their NEPA reviews, including:

- Advises agencies to quantify projected greenhouse gas emissions of proposed federal actions;
- Encourages agencies to provide appropriate levels of quantitative and qualitative analysis
- Counsels agencies to consider alternatives that make that action and affected communities more resilient to effects of a changing climate.

To view a copy of the final guidance, click [here](#).

ON THE HORIZON

- Next PGC Meeting: August 19, 2016, 1-888-472-4293; passcode: 7021111.
- Planning Ahead: PGC's next in-person membership meeting will be held September 21st at DLA Piper, 500 Eighth St., NW, Washington, DC 20004, (202) 799-4000 and an all-member dinner will be held September 20th. Stay tuned for more details!

- Next Commission Meeting: September 21, 2016

CONTACT INFORMATION

If you have any questions, please contact Andrea Chambers at 202-799-4130 or via e-mail [here](#).