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RECENT REGULATORY AND COURT ACTIVITY

Natural Gas Pipeline Company and Wyoming Interstate Company File Cost and Revenue Studies: On April 4, 2017, Natural Gas Pipeline Company (“NGPL”) and Wyoming Interstate Company (“WIC”) both filed cost and revenue studies (“C&R”) in each of their Section 5 investigations. NGPL claims in its C&R that its costs significantly exceed its revenues. Specifically, NGPL states that its actual cost of service (COS) during this period was \$576 million. NGPL estimates that at current rates it will under collect its COS by \$58.6 million. Statement A of NGPL’s C&R shows that the overall COS of \$576 million includes Operation and Maintenance expenses of approximately \$180 million, Depreciation, Negative Salvage and Amortization of approximately \$92 million, Taxes other than Income of approximately \$24 million, Interest Expense of approximately \$205 million, Equity Return and Income Taxes of approximately \$61 million, and offsetting credits to the COS of approximately \$15 million. NGPL is relying upon the capital structure of its parent PipeCo, which has a 30 percent capital structure and a 15% rate of return on equity applied to an equity portion of total rate base (30 percent of approximately \$1.4 million). The C&R also indicates that NGPL is not subject to federal income or state income taxes, but that its rates include an allowance for income taxes as if it were a corporation. Access NGPL’s C&R [here](#).

WIC also claims in its C&R that its costs significantly exceed its revenues. Statement A of WIC’s C&R shows an overall COS of \$157 million, which includes Operation and Maintenance expenses of approximately \$18 million, A&G costs of approximately \$6 million, Depreciation and Amortization of approximately \$32 million, Taxes other than Income of approximately \$5 million, Federal Income Taxes of \$35 million, state income taxes of roughly \$1 million and Return Allowance of \$62 million. WIC did not included any test period adjustments or projections. WIC’s overall return reflects WIC’s as-adjusted capitalization of 100% percent equity as of December 31, 2016 and a 13% rate of return on equity applied to its total capital of \$470 million. Access WIC’s C&R [here](#).

Federal Court Rules that FERC Must Conduct Complete Civil Trial In Order to Enforce \$453 Million Penalty Against Barclays: On March 30, 2017, the U.S. District Court for the Eastern District of California ruled that FERC had to go through a full civil proceeding, and a trial if necessary, to enforce any penalty against Barclays and some of its energy traders. The court also ruled that the defendants were entitled to conduct discovery. FERC had argued that under the Federal Power Act, an enforcement proceeding in federal court is a limited action where the

court is restricted to the administrative record as developed by FERC. The defendants had argued that because the Federal Power Act contemplates a *de novo* review, parties are entitled to conduct discovery and develop a new record beyond what was established before the agency. In siding with the defendants, the court reasoned that the Federal Power Act allows subjects of FERC enforcement proceedings to choose between either an evidentiary hearing before a FERC administrative law judge, where there would be discovery rights and an opportunity to establish a record; or, to challenge FERC's allegations in federal court under a *de novo* review. The court reasoned that it would be illogical to interpret the Federal Power Act to mean that a subject of an enforcement proceedings has *less* rights if it chooses to go to federal court rather than before an ALJ. FERC has accused Barclays of manipulating electricity prices in Western U.S. markets between November 2006 and December 2008 by scheming to trade day-ahead fixed-price electricity to boost the bank's financial swap positions. FERC previously issued an order stating that Barclays and its traders owe over \$453 million in civil penalties. Barclays and the individual defendants have challenged the order in federal court. Read [here](#).

President Trump Issues Executive Order on Energy Independent: On March 28, 2017, President Trump issued an executive order that directs federal agencies to review regulations that burden the development of domestic energy resources and rescind those that unduly burden the development of such resources, including the Clean Power Plan. Agency heads must submit a plan to do so within 45 days. A draft report must be submitted to the Vice President, OMB, the CEQ, and the Assistants to the President for Economic and Domestic Policy, within 120 days and a final report in 180 days. The Order revokes Climate-Related Presidential and Regulatory Actions passed under the Obama presidency and rescinds the President's Climate Action Plan and the Climate Action Plan Strategy to Reduce Methane emissions. Of particular significance to natural gas pipeline certification, the order rescinds finalized guidance put forward in August 2016 by the CEQ concerning how federal agencies like FERC should conduct greenhouse gas emission analysis in their NEPA reviews, such as those conducted in connection with certification of new pipeline facilities. The Order also requires agencies use estimates of costs and benefits of methane for regulatory impact analysis that are based on the best available science and economics. It also requires the Secretary of the Interior to reconsider prior rules on hydraulic fracking on federal lands, and other guidance that might burden energy development. Read [here](#).

Federal Court Dismisses Environmental Groups' Suit Against FERC Alleging Bias: On March 22, 2017, the U.S. District Court for the District of Columbia dismissed a lawsuit filed by the Delaware Riverkeeper Network alleging that FERC was biased towards granting certificates for interstate natural gas pipelines. The environmental group had argued that because the agency's budget relied on regulatory fees from the industry, FERC was "subject to an impermissible temptation to be biased in favor of the private companies." The federal court dismissed these allegations, reasoning that the plain language of the Omnibus Budget Reconciliation Act of 1986 — which authorizes FERC to raise revenue from industry fees to cover its appropriations — does not give the agency control over its own budget, and that FERC thus cannot increase its budget by approving more pipelines. Read [here](#).

RECENT PGC ACTIVITY

PGC, in conjunction with American Forest and Paper Association (“AF&PA”) and American Public Gas Association (“APGA”) has prepared joint responsive comments in the FERC Commission’s Notice of Inquiry regarding Tax Allowances to respond to the initial comments submitted by INGAA. The joint comments contain rebuttal prepared by our economic consultants to the economic consultants sponsored by INGAA and explain why the tax allowance is not appropriate for partnership pipelines and other pass-through entities that do not pay taxes at the entity level.

ON THE HORIZON

The monthly membership call for April will occur tomorrow, April 7, 2017 at 12:00 pm EST. Please use dial in: 1-888-472-4293; and passcode: 7021111#. The monthly membership call for May will be cancelled.

The next in-person Membership and Board Meeting will be at DLA’s offices in Washington, DC on June 7-8, 2017. Please be on the lookout for a formal invitation and details for arranging a hotel room.

CONTACT INFORMATION

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