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## RECENT REGULATORY AND COURT ACTIVITY

Federal Appellate Court Rules that State Court Is Proper Venue for Dispute Over Gas Pipeline Transportation Contract: TransCanada Corporation's unit, Great Lakes Transmission LP, sued Essar Steel Ltd., a firm transportation holder, for breaching its transportation contract. Great Lakes filed its lawsuit in federal district court, arguing that because FERC regulated the contract and the contract incorporated Great Lakes' FERC tariff, federal law applied. The district court agreed. However, on December 5<sup>th</sup>, the United States Court of Appeals for the Eight Circuit vacated a district court's judgment. The Eight Circuit held that because Great Lakes did not make any claim under the Natural Gas Act or under any other federal law, the claim amounted to a straightforward breach of contract action and belonged in state court, rather than federal court.

President-elect Trump Announces Plan to Repeal Energy Regulations: On November 21<sup>st</sup>, Present-elect Trump announced that he would repeal regulations in the energy sector that eliminate jobs; although he did not identify which specific regulations he intends to repeal. Officials close to the incoming administration stated separately that the incoming administration will likely target regulations on methane emissions from oil and gas regulations, as well as current restrictions on drilling in federal waters.

FERC Issues White Paper on Effective Compliance Programs: In November, FERC's Office of Enforcement issued the "Staff White Paper on Effective Energy Trading Practices." The White Paper attempts to provide additional guidance regarding the Commission's recommendations for compliance programs. The White Paper focuses on energy trading practices, but it also included examples of practices that make for effective compliance programs. The White Paper is not a binding rule or regulation, but provides insight into the Commission's views. The White Paper emphasizes that a compliance program should be tailored to the particular company. Some effective practices noted include: (a) involving personnel with a variety of experience in compliance efforts, including legal, operations, risk management, and trading; (b) integrating compliance personnel into business units, (c) implementing a compensation that rewards compliance; and (d) developing varied monitoring programs to ensure that the company's operations remain compliant. The Commission also suggested not relying only upon on single, all-inclusive annual compliance training. Instead, the White Paper recommends supplementing the annual compliance training with other training opportunities and alerts and focusing on topics relevant to the particular staff. Moreover, the White Paper noted that failure to allocate sufficient resources or to regularly assess the effectiveness of the compliance program is likely to make it less effective. Read White Paper [here](#).

FERC Issues Annual Enforcement Report: In November, FERC’s Office of Enforcement issued its annual report on enforcement. The report states that the “most significant shift” in the Office of Enforcement’s work in 2016 was “the amount of time it spent litigating in federal district court.” The report also discusses the three show cause orders the Commission issued in 2016. According to the report, the Department of Investigations within FERC’s Office of Enforcement opened 17 new investigations in 2016, 12 of which involved potential market manipulation. (By comparison, in 2015 there were 19 new investigations, 14 of which involved allegations of market manipulation). The report also stated that the Division of Audits and Accounting completed 214 audits in 2016, which led to a total of 214 recommendations for corrective action. Read Report [here](#).

Millennium Pipeline Sues New York Regulators For Failure to Timely Issue a Water Quality Certification: The Millennium Valley Lateral is a small pipeline expansion project in New York. FERC approved the project on November 9<sup>th</sup>, but conditioned its approval on the pipeline acquiring the state-issued Clean Water Act Section 401 certificate. In a November 18<sup>th</sup> letter, the New York State Department of Environmental Conservation (“NYDEC”) stated that it had until at least August 30, 2017 to decide whether to issue the 401 permit, despite Millennium’s previously announced April 2017 in-service date. On December 5<sup>th</sup>, Millennium filed suit against the NYDEC in the D.C. Circuit court. In its opening brief to the D.C. Circuit, Millennium alleges that the New York regulators are violating federal law and the FERC certificate order.

Sierra Club and Other Environmental Groups File Emergency Motion Challenging the Southeast Market Pipeline: In September, the Sierra Club and other environmental groups appealed FERC’s approval of the \$3.5 billion Southeast Market Pipeline to the D.C. Circuit. On October 24<sup>th</sup>, the same groups filed an emergency request for expedited consideration of their challenge to the FERC order and a stay of the FERC order pending their appeal. On November 17<sup>th</sup>, the D.C. Circuit denied the motion to stay, but set an expedited schedule. Petitioners’ opening briefs are due December 9<sup>th</sup>, FERC’s brief is due January 31<sup>st</sup>, intervenors’ and amicus briefs are due February 7<sup>th</sup>, petitioners’ reply briefs are due February 21<sup>st</sup>, and any final briefs are due March 7<sup>th</sup>.

## RECENT PGC ACTIVITY

PGC held a Board meeting on December 6, 2016 in Chicago, IL and set the following meeting dates for 2017. Calendar appointments will be sent for these dates.

- February 15-16, 2017: In Miami, FL, PGC will hold Board and Membership meetings, along with the a new member reception.
- June 8-9, 2017: In Washington, DC, PGC will hold Board and Membership meetings.
- September 19-20, 2017: In Washington, DC, PGC will hold Board and Membership meetings.
- December 5, 2017: In Pittsburgh, PA, PGC will hold a Board meeting.

The PGC Board also set the following dates for the 2017 monthly membership calls. Calendar appointments will be sent for these dates as well.

- January 27, 2017
- March 17, 2017
- April 7, 2017
- May 9, 2017
- July 14, 2017
- August 18, 2017
- October 20, 2017
- November 17, 2017
- December 15, 2017

## **ON THE HORIZON**

- The monthly membership call for December will occur on December 16, 2016 at 12:00 pm EST. Please use dial in: 1-888-472-4293; and passcode: 7021111#.
- The monthly membership call for January will occur on January 27, 2017 at 12:00 pm EST. Please use dial in: 1-888-472-4293; and passcode: 7021111#.
- The next in-person Membership and Board Meeting will be at DLA's offices in Miami, FL on February 15-16, 2017. More details will be coming. Please consider inviting a potential new member to learn about PGC.

## **CONTACT INFORMATION**

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