



REGULATORY UPDATE

Updates on Section 5 Cases at FERC: 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 within 75 days of the order, or April 5, 2016. This cost and revenue study will contain "actual data for the latest 12-month period." As required, the pipelines filed their cost and revenue studies on April 5th. You can view excerpts from the cost and revenue study [here](#), which show each pipeline's claimed cost of service, return, and asserted under or over-recovery (Columbia and Empire show an under-recovery, while Tuscarora and Iroquois show an over-recovery) – full copies of the cost and revenue studies are hyperlinked below for each individual pipeline.

Since FERC initiated the proceedings, in addition to assigning presiding judges to each case, FERC appointed settlement judges in each of these proceedings in an effort to "facilitate the settlement process" and resolve the contested issues. The settlement judges will convene settlement conferences and report to the presiding judges every 60 days. Meanwhile, the hearing proceedings before the presiding judges will continue as scheduled. Therefore, these cases will continue along a settlement track with the settlement judge, who will be convening settlement conferences with parties, while simultaneously proceeding along a litigation track, with data requests and other procedural events that are outlined in the procedural schedules (hyperlinked below).

A brief description of the current case status, including the settlement conference schedule for each case, follows:

- Columbia Gulf Transmission (Docket No. RP16-302): 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](#).
 - o *Case Status*: CGT filed its [cost and revenue study](#) on April 5. A settlement judge was appointed to this proceeding, and the first settlement conference is scheduled for May 12. Data requests and responses are ongoing.
 - à *Reminder*: The ALJ held a prehearing conference on February 10, 2016 and [established a procedural schedule](#). CGT filed a [request for rehearing](#) on February 19th, which the [Commission denied](#) on March 31st.
- Empire (Docket No. RP16-300): 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](#).

- o *Case Status:* Iroquois filed its [cost and revenue study](#) on April 5. A settlement judge was appointed to this proceeding, and the first settlement conference is scheduled for May 12. Data requests and responses are ongoing.
à *Reminder:* The ALJ held a prehearing conference in this matter on February 10 and [established a procedural schedule](#). Discovery began April 6. Empire filed a [request for rehearing](#) of the Commission's decision to bring a Section 5 action on February 22nd which the [Commission denied](#) on March 31.

- Iroquois (Docket No. RP16-301): 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](#).

- o *Case Status:* Iroquois filed its [cost and revenue study](#) on April 5. A settlement judge was appointed to this proceeding, and the first settlement conference is scheduled for April 28. Data requests and responses are ongoing.
à *Reminder:* The ALJ held a prehearing conference in this matter on February 12 and [established a procedural schedule](#).

- Tuscarora (Docket No. RP16-299): 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](#).

- o *Case Status:* Tuscarora filed its [cost and revenue study](#) on April 5. A settlement judge was appointed in this proceeding, and the first settlement conference is scheduled for May 19. Data requests and responses are ongoing.
à *Reminder:* 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 22nd, which the [Commission denied](#) on March 31.

PHMSA Issues Notice of Proposed Rulemaking: On March 17, 2016, the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) issued a Notice of Proposed Rulemaking (“NPRM”) that would significantly expand regulations for gas transmission and gathering pipelines. The regulations would expand data collection requirements, compel companies to better understand pressure limitations, increase construction oversight and broaden certain rules' reach beyond high-consequence areas, among other requirements. The proposed rulemaking would expand data collection and integration requirements for infrastructure integrity management — including data validation and seismicity components — and would require companies to be more systematic in verifying pipelines' maximum allowable operating pressures. The rule would also require operators to report instances in which pipelines exceed their maximum pressures. Further, PHMSA's proposal would provide more direction on how to evaluate in-line inspections to better identify anomalies, require additional post-construction quality inspections to address coating integrity and cathodic-protection problems, and modify repair criteria for pipelines inside and outside high-consequence areas. Specifically, PHMSA proposes, among other things, to (1) enhance integrity management (“IM”) requirements, (2) create a new clarification applicable to gas pipelines entitled “moderate consequence areas” or “MCAs,” (3)

require pressure testing for older pipelines that have not previously required testing, and (4) modify regulations regarding onshore gathering lines.

The industry can expect to pay between \$39.8 million and \$47.4 million annually to comply with the proposed safety rule, according to PHMSA. The largest cost would likely be associated with re-establishing maximum allowable operating pressures, verifying infrastructure material properties and system integrity assessments outside high-consequence areas. PHMSA estimated that these tasks would cost industry on average about \$17.8 million to \$22 million per year. The next most expensive aspect of the rule would be the gas gathering line regulations, PHMSA said. The NPRM estimated these costs to be between \$12.6 million and \$15.1 million annually. Corrosion control would come in third place at \$6.3 million to \$7.9 million annually. Comments are due within 60 days following publication in the *Federal Register*. A copy of the NPRM is available [here](#).

NGSA Issues 2016 Pipeline Over-Recovery Report: NGSA recently issued its 2016 Pipeline Cost Recovery Report. This annual report is based on FERC Form 2 data and shows the average return on equity for 32 interstate natural gas pipelines over a five-year period, from 2010-2014. Over the five-year period the study shows that: 8 pipelines had ROEs 16% or higher; 19 pipelines had ROEs 12% or higher, and the total over-recovery is \$3.9 billion. You can view a summary of the study [here](#). If you are interested in viewing individual pipeline data, please let us know.

ENFORCEMENT UPDATE

Berkshire Power Company LLC Settles Enforcement Action: on March 30, Berkshire Power Company LLC ("Berkshire") and Power Plant Management Services LLC ("PPMS") entered into a settlement agreement with FERC's Office of Enforcement. Under the agreement, Berkshire and PPM admit the violations and agree to pay a civil penalty of \$2M and implement measures designed to improve compliance with Commission regulations and jurisdictional tariffs. Berkshire also agrees to pay to ISO-NE disgorgement of over \$1M, plus interest. As a reminder, Berkshire/PPMS was alleged to have engaged in a fraudulent scheme to perform unreported maintenance work and to conceal that work and associated maintenance outages from ISO-NE. Individuals at the plant scheduled maintenance work for times when the Plant was unlikely to be dispatched and then failed to notify ISO-NE about the work or the associated Plant unavailability. There were at least 6 instances where false representations were made to ISO-NE that the Plant was starting up or was able to start up when it was, in fact, unavailable due to ongoing maintenance or other technical problems. You can read the entire settlement agreement [here](#).

CLEAN POWER PLAN UPDATE

States Act on Clean Power Plan Measures Despite Uncertainty: in March, several states took action on the CPP, despite Senate Majority Leader Mitch McConnell (R-KY)'s [letter to the National Governor's Association on March 21](#) that urged governors to "wait and see" the outcome of the court challenges to the rule. The D.C. Circuit is expected to hear arguments on June 2nd in *State of West Virginia, et al. v. EPA*, which joined lawsuits brought by 27 states and several power companies that are challenging the plan. However, least 25 states have publicly declared they will begin measures to plan for the carbon rule, as EPA Administrator Gina McCarthy testified at budget hearings before two U.S. House of Representatives Appropriations Committee subcommittees on March 22.

ON THE HORIZON

- Next PGC Meeting: Friday, April 15 at 12:00 p.m. ET. [Dial In: 888-857-7121; Passcode: 202 661 7607]
- Next Commission Meeting: April 21, 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](#).