UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Ruby Pipeline, LLC	)	Docket Nos. CP09-54-000
Southern Natural Gas Company	)	CP09-36-000
	)	CP09-36-001
Southeast Supply Header, LLC and	)	
Southern Natural Gas Company	)	CP09-40-000

MOTION OF THE INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA TO INTERVENE

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214, the Interstate Natural Gas Association of America ("INGAA") moves to intervene in these proceedings for the limited purpose of seeking rehearing on a discrete issue.

In two recent orders in these dockets, *Southern Natural Gas Co., et al.*, 128 FERC ¶ 61,198 ("Order Granting Abandonment Authority and Issuing Certificates") (August 27, 2009) and *Ruby Pipeline, LLC*, 128 FERC ¶ 61,224 ("Preliminary Determination On Non-Environmental Issues") (September 4, 2009), the Commission ruled on an issue concerning the recovery of an allowance for funds used during construction ("AFUDC"). The issue of concern to INGAA relates to the availability of AFUDC for pipeline construction costs incurred prior to a pipeline filing an application for a certificate of public convenience and necessity to build new pipeline facilities pursuant to section 7(c) of the Natural gas Act ("NGA"), 7 U.S.C. § 717f(c), and the kind of costs that are eligible for AFUDC treatment.

While the formal process for evaluating a pipeline company's proposal to build an interstate natural gas pipeline begins when the pipeline files a certificate application under NGA

§ 7(c), in recent years the Commission has strongly promoted use of the pre-filing process by applicants for all major natural gas projects. See generally *Ideas for Better Stakeholder Involvement in the Interstate Natural Gas Pipeline Pre-Filing Process*, FERC Staff OEP Gas Outreach Team (December 2001), available at http://www.ferc.gov/industries/gas/enviro/stakeholder.pdf; Order 665, *Regulations Implementing Energy Policy Act of 2005; Pre-Filing Procedures for Review of LNG Terminals and Other Natural Gas Facilities*, FERC Stats. & Regs. ¶ 31,195 at PP 3-4 (2005); *id.* at FERC Stats. & Regs. (Preambles) ¶ 32,586 at PP 2-10 (NOPR). It is INGAA's position that, in denying the Pipelines' requests for certain costs incurred prior to filing their certificate applications in these cases, the Commission put misplaced reliance on an outdated accounting release, *Capitalization of Interest During Construction*, Accounting Release No. 5 (Revised), FERC Stats. & Regs. ¶ 40,005 (1968)("AR-5"), and therefore concluded that certain kinds of costs previously recognized as being eligible for AFUDC were no longer eligible. The accounting standard announced in AR-5, which effectively establishes the date of filing an NGA § 7(c) certificate application as the beginning of eligibility for AFUDC, predates the Commission's policy to encourage pipelines to pre-file substantial information regarding a pipeline construction project before filing the formal § 7(c) application, and does not reflect the current environment for pipeline construction, which requires a long lead time for purchases of equipment. From the perspective of encouraging needed pipeline construction and obtaining the industry's cooperation with the voluntary pre-filing policy, the Commission's adherence to an outdated accounting release is, in INGAA's view, "penny wise and pound foolish."

In accordance with Rule 214(b), INGAA's interest in these proceedings is based on its ability to represent the views of an entire industry on issues that affect that industry. INGAA is a national, non-profit trade association that represents the interstate natural gas pipeline industry operating in the United States, as well as comparable pipeline companies in Canada and Mexico. INGAA's United States members transport virtually all of the natural gas sold in interstate commerce, and are regulated by the Commission pursuant to the NGA, 15 U.S.C. §§ 717-717w. The Commission's orders in *Ruby* and *Southern* announced a policy with respect to AFUDC that seemingly will govern the recovery of AFUDC by other INGAA members in the future.

Pursuant to Rule 214(b)(3) and 214(d), INGAA submits that there is good cause for approving INGAA's late intervention in these proceedings.

First, it was not apparent at the outset of either of these proceedings that the Commission would establish important precedent with respect to the timing of AFUDC accruals. Prior to issuance of these orders, INGAA was not aware that the Commission viewed pre-filing activities as unrelated to "construction" costs that the Commission has previously considered eligible for AFUDC treatment.

Second, while INGAA members' views on issues concerning the availability of AFUDC are generally in accord with those of the particular pipelines involved in these two proceedings, INGAA represents the interstate pipeline industry in general and therefore can speak for the industry as a whole.

Third, because INGAA seeks to intervene for the sole purpose of presenting its view on a discrete legal issue relating to AFUDC, and does not depend on any factual development or other procedures, INGAA's intervention would not delay any established procedural schedule or otherwise disrupt the Commission's proceeding. INGAA's proffered rehearing arguments, which are being filed with this motion, can be considered by the Commission at the same time that it considers the pipelines' arguments and those of other parties who may seek rehearing on

AFUDC or other issues. Accordingly, consideration of INGAA's legal argument should not delay the Commission's proceedings.

Finally, there is no apparent prejudice to the parties to these proceedings. We are authorized to represent that Ruby Pipeline and Southern Natural support INGAA's limited intervention.

In short, INGAA submits that its intervention for the purpose of presenting the regulated interstate pipeline industry's view on an important rate making will be in the public interest.

CONCLUSION

INGAA respectfully requests that the Commission grant its Motion to Intervene and consider INGAA's accompanying request for rehearing.

Respectfully submitted,

Joan Dreskin
General Counsel
Timm Abendroth
Dan Regan
Attorneys
Interstate Natural Gas
Association of America
10 G Street, NE
Suite 700
Washington, DC 20002
(202) 216-5928
jdreskin@ingaa.org
tabendroth@ingaa.org

September 28, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of September, 2009, pursuant to the Commission's regulations governing service at 18 C.F.R. § 385.2010, a copy of the foregoing Motion of the Interstate Natural Gas Association of America to Intervene was served electronically on all parties listed in the Commission's official service list for these proceedings.

______/s/______
Timm Abendroth

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Southern Natural Gas Company	)	CP09-40-000

REQUEST OF THE INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA FOR REHEARING

Pursuant to section 19(a) of the Natural Gas Act ("NGA"), 15 U.S.C. § 717r(a), and Rule 713 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.713 (2009), the Interstate Natural Gas Association of America ("INGAA") seeks rehearing of the Commission's order of August 27, 2009, in *Southern Natural Gas Co., et al*., 128 FERC ¶ 61,198 ("Order Granting Abandonment Authority and Issuing Certificates") and its order of September 4, 2009 in *Ruby Pipeline, LLC,* 128 FERC ¶ 61,224 ("Preliminary Determination On Non-Environmental Issues"). Specifically, and pursuant to Rule 713(a)(1)), the Commission erred in denying Southern Natural Gas Company's and Ruby Pipeline's proposals to recover an allowance for funds used during construction ("AFUDC") insofar as those funds accrued prior to the date of their certificate applications. *See Southern*, 128 FERC 61,198 at PP 40-45; *Ruby Pipeline,* 128 FERC ¶ 61,224 at PP 85-92.

STATEMENT OF ISSUES

Pursuant to Rule 713(c)(2), INGAA presents the following issue for rehearing:

Whether the Commission's denial of Southern's and Ruby's requests to recover AFUDC for costs incurred in connection with their pipeline projects prior to the date of their certificate applications is consistent with standards of reasoned decision making under the Administrative Procedure Act (APA), 5 U.S.C. § 706(2), and pertinent judicial precedent. *See, e.g., Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

BACKGROUND

A. AFUDC and GAAP

A regulated utility or pipeline is entitled to recover the cost of financing construction of facilities used in transporting gas subject to the Commission's jurisdiction, and that financing cost includes interest on debt and a reasonable return on capital investment. *See, e.g., Mid-Tex Elec. Co-op., Inc. v. FERC*, 773 F.2d 327, 330-31 (D.C. Cir. 1985). For costs incurred before public utility facilities go into service (i.e., become "used and useful"), the issue has been when -- but not whether -- the utility can recover those costs from its customers, as long as they ultimately are put into service. Under the AFUDC method, interest and return on equity for construction in progress are accrued and capitalized during the construction period, but no payments are made by ratepayers until the construction is completed and the new facilities begin operating. *Id*. at 331; Kolbe, Tye, and Meyer, *Economic Principles and Applications to Natural Gas Pipelines and Other Industries* at 47 & n.82 (1993)(discussing AFUDC in utility ratemaking process). At that point, both the investment and the accrued carrying charges are added to rate base and recovered over the life of the facility. *Mid-Tex*, 773 F.2d at 331; *see also* Bonbright, Danielson, and Kamerschen, *Principles of Public Utility Rates*, 248 (2 Ed.1988)("The primary purpose of AFUDC is to capitalize the costs of financing construction, separate the effects of the construction program from current operations, and to allocate current capital costs to future periods when these capital facilities are producing revenue").

Under the AFUDC cost recovery method, if financing costs are excluded from the AFUDC account, they cannot be recovered from ratepayers.

Recovery of AFUDC in the context of regulated industries is consistent with long–settled, generally accepted accounting principles ("GAAP"), under which the interest cost on expenditures for an asset is capitalizable for the period during which activities required to get the asset ready for its intended use are underway and interest is being incurred. *See generally Original Pronouncements as Amended, Statement of Financial Accounting Standards No. 34, Capitalization of Interest Cost* (Financial Accounting Standards Board, 2008)("FAS 34").[1]

B. AR-5.

In 1968, the Commission's Chief Accountant addressed a question as to the proper period for capitalization of interest during construction in *Capitalization of Interest During Construction*, Accounting Release No. 5 (Revised), FERC Stats. & Regs. ¶ 40,005 (1968)("AR-5") as follows:

> Interest during construction may be capitalized starting from the date that construction costs are continuously incurred on a planned progressive basis. Interest should not be accrued for the period prior to: (1) the date of issuance of the preliminary permit by the Commission of a licensed hydroelectric project; and (2) the date of the application to the Commission for a certificate to construct facilities by a natural gas company. Interest accruals may be allowed by the Commission for the period prior to the above dates if so justified by the company. No interest should be accrued during period of interrupted construction unless the company can justify the interruption as being reasonable under the circumstances.
>
> Capitalization of interest stops when the facilities have been tested and are placed in or ready for service. This would include those portions of construction projects

[1] FAS 34 is available at: http://www.fasb.org/cs/BlobServer?blobcol=urldata&blobtable =MungoBlobs&blobkey=id&blobwhere=1175818755148&blobheader=application%2Fpdf

> completed and put into service although the project is not fully completed. Should the test period exceed thirty days, the company must submit full particulars and justification for an extension of such period to the Commission in accordance with Plant Instruction 9.D.

AR-5 was not promulgated through a rule making process or (to INGAA's knowledge) any other process providing for public notice and comment. Nor did the Chief Accountant offer any authority, reasoning or discussion in support of these pronouncements.

C. Pre-filing.

The Commission has the primary responsibility for evaluating and siting proposed interstate natural gas pipelines under NGA § 7(c). In evaluating pipeline construction projects under NGA § 7(c), a large part of the Commission's responsibly includes preparation of an environmental assessment or environmental impact statement to fulfill the requirements of the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. §4321, *et seq*. See 18 C.F.R. Part 380 (NEPA implementing regulations). There are, however, numerous other agencies (federal, state and local) that have a role in pipeline and siting, focusing on a wide spectrum of cultural, natural, economic, educational, political, and other resource interests. As a result of these various interests and mandates, agencies can have differing or conflicting priorities and responsibilities.

Traditionally, the formal process for evaluating a pipeline's proposal to build an interstate pipeline begins when the company files a certificate application with the FERC. The application includes maps showing the preferred route, the proposed facilities, the status of permit applications with local, state and federal agencies, affected landowners, and information on how the pipeline will affect the environment. *See generally Ideas for Better Stakeholder Involvement in the Interstate Natural Gas Pipeline Pre-Filing Process*, FERC Staff Office of Energy Policy

Outreach Team (December 2001)("OEP Pre-Filing Paper").[2] Over a period of years, however, the requirements for compliance with NEPA and the plethora of state and local pipeline planning needs led the Commission and the industry to engage in significant pre-filing activity. As the Office of Energy Projects put it in its 2001 Pre-Filing Paper, its goal "is to encourage participation in a process where all stakeholders have the opportunity to have input **before the development of the application**, so that issues are raised and addressed and solutions crafted and presented as part of the company's proposal." *Id*. at 3 (underscoring and bold in original). While there are many important players in the process, OEP clearly identified who is at the center (*id.* at 4):

> Natural gas pipeline companies and their consultants, contractors, and industry groups are the centerpiece of the pipeline siting process because they are the project planners and proponents. This group carries a large part of the responsibility to implement and coordinate the project activities that occur *during the pre-filing time frame.* There are a number of separate components to the actions that the company will need to take, including developing a company philosophy of commitment, ensuring agency participation, training company representatives and land agents, developing a public participation plan, collecting data, and having a plan for potential mitigation and compensation.

Thus, since 2001, the Commission has actively promoted an optional pre-filing process for interstate gas pipelines. After initially codifying certain collaborative pre-filing procedures the Commission staff developed certain more practical pre-filing guidelines under which an prospective applicant would request OEP staff assistance seven to eight months prior to filing an application, and provide lists of federal and state agencies in the project area with permitting requirements, identify other interested persons and organizations, provide details on work already done (i.e., contacting landowners, agency consultants, project engineering, and route planning), offer a list of potential third-party contractors who can prepare a NEPA document,

[2] The OEP Report is available at: http://www.ferc.gov/industries/gas/enviro/stakeholder.pdf.

and provide a detailed Public Participation Plan. If the guidelines for requesting the pre-filing process are satisfied by a prospective applicant, a written acceptance is issued by the Director of OEP, and a pre-filing docket number is assigned. See FERC Stats. & Regs. (Preambles) ¶ 32,586 at PP 2-10.

In Section 311(d) of the Energy Policy Act of 2005 (EPAct 2005), Congress directed the Commission to implement mandatory procedures requiring prospective applicants for new LNG and related FERC-jurisdictional pipeline facilities to begin the Commission's pre-filing review process at least six months prior to filing a their actual certificate application. In its NOPR proposing new regulations to implement that mandate, the Commission proposed to adopt its existing pre-filing process as the mandatory pre-filing process for review of LNG terminal facilities, while providing for continued voluntary use of those guidelines for non-LNG related pipeline facilities. See FERC Stats. & Regs. (Preambles) ¶ 32,586 at PP 2-10 ("NOPR"). There, the Commission commented (at P 10): "The Commission's experience with the current pre-filing process is that it has been used with much success since its introduction several years ago. It is a process with which the natural gas industry, governmental entities and the public are familiar."

In adopting the pre-existing voluntary pre-filing procedures as mandatory regulations for LNG facilities (while retaining them on an optional basis for other pipeline facilities), see 18 C.F.R. § 157.21, the Commission reiterated that "it was already the Commission's policy prior to enactment of EPAct 2005 to encourage prospective applicants' use of the Commission's optional pre-filing process," and that its pre-filing process "has been used with much success." Order No. 665, *Regulations Implementing Energy Policy Act of 2005; Pre-Filing Procedures for Review of LNG Terminals and Other Natural Gas Facilities*, FERC Stats. & Regs. ¶ 31,195 at PP 3-4 (2005).

D. The Commission's Orders

1. *Southern*

Southern followed the Commission's voluntary pre-filing procedures for its project, receiving a pre-filing docket in March 2008 followed by its formal certificate application in December 2008. Southern stated that it incurred construction expenditures continuously on a planned and progressive basis starting from March 2008, and proposed to start the accrual of AFUDC from that time.

Citing AR-5, the Commission rejected Southern's proposed AFUDC for costs incurred prior to its certificate application. The Commission ruled that "Southern's receipt of its pre-filing docket number in March 2008, does not justify the accrual of AFUDC prior to the . . . date the certificate application was filed with the Commission." *Southern*, 128 FERC ¶ 61,198 at P 43. Further, the Commission ruled that "Southern did not provide sufficient detail to demonstrate that the costs incurred were in fact construction costs rather than costs related to preliminary survey and investigation type activities[.]" *Id.* at P 44. The Commission then directed Southern to adjust all of its pertinent cost of service items to reflect the effects from the reversal of the AFUDC accrued prior to the date of its certificate application. As a result, Southern will have to absorb all of those disallowed financing costs that it incurred during the pre-filing process.

2. *Ruby Pipeline*

Ruby also followed the Commission's pre-filing procedures, and proposed to include in its AFUDC certain costs incurred prior to filing its formal certificate application in January 2009, including costs associated with early financial commitments to obtain materials, acquiring rights-of-way, and undertaking extensive upfront surveying and engineering work in the initial and stakeholder scoping stages. *Ruby Pipeline*, 128 FERC ¶ 61,224 at P 88. According to the

Commission, the costs included approximately $50 million in pipeline supply payments, approximately $8 million in engineering costs, $10 million in environmental work, and approximately $3 million to secure rights-of-way. *Id.* at P 89.

In rejecting recovery of any AFUDC for costs incurred prior to Ruby's certificate application, the Commission again relied on AR-5 and the "preliminary survey/investigation activities" distinction that it had invoked in *Southern*. The Commission added (*id.* at PP 90-91):

> AFUDC should not be accrued on expenditures for materials and supplies, including progress and other payments incurred for the manufacture of pipe, purchased prior to the initiation of construction. Similarly, Commission policy does not allow the capitalization of AFUDC on rights-of-way when such costs are not incurred as part of construction. Furthermore, costs incurred on a relatively continuous basis do not necessarily constitute construction costs incurred on a planned, continuous, and progressive basis.
>
> Further, the fact that Ruby participated in the pre-filing process does not, in and of itself, serve as evidence sufficient to justify accrual of AFUDC prior to the date it filed its application. AFUDC is not available for all costs necessarily incurred by a project sponsor to bring a project to fruition. AFUDC can only be accrued on costs incurred during construction of the project. Preliminary survey and investigation costs, including those which may be incurred before or during the pre-filing process, are costs incurred prior to the commencement of construction, and therefore would not constitute construction costs eligible for the accrual of AFUDC.

ARGUMENT

A. The Commission's *Southern* and *Ruby* Rulings Establish Precedent That Is at Cross Purposes with Its Pipeline Construction Policies.

The principle behind AFUDC is that regulated entities are entitled to the opportunity to earn a return on the cost of prudently incurred investments, including the opportunity to recover the cost of money used during construction. In deference to the "used and useful" principle, the AFUDC process defers recovery of those costs until faculties are in service, but there has never been any issue in principle over the regulated entity's right to recover those costs as long as the facilities put into public service meet the "used and useful" standard. *See, e.g., Mid-Tex,* 773 F.2d at 330-31. This issue is especially important for new ("Greenfield") projects because, while debt and equity costs are incurred continuously during construction, they generally produce no revenues at all until the project is completed and placed in service. The Commission's rulings in the *Southern* and *Ruby* proceedings appear to elevate form over substance by drawing a line between costs incurred before and after a pipeline files a formal application for a construction certificate. Aside from the fact that the new rule announced in these cases suffers from procedural as well as substantive legal defects (addressed below), the rule creates a disincentive for pipelines to participate in the Commission's voluntary pre-filing process, and may even affect the incentive to invest in building new pipelines.

The Commission's NEPA pre-filing program acknowledges that a pipeline project typically requires environmental, surveying, right-of-way, engineering, regulatory, and long-lead supply procurement work prior to a formal certificate application. *See, e.g.,* 18 CFR § 157.21(d)(7); *see also* § 157.21(b)(2)(ii)(requiring compliance in the pre-filing process with the separate Part 380 NEPA regulations). Pipelines incur substantial costs under the recommended pre-filing procedures in producing the Resource Reports required under Appendix A, Part 380 of the Regulations, and other front-end preliminary survey and engineering work. It is only because of the Commission's NEPA pre-filing policy that such costs are incurred in advance of the certificate application. The Commission's rulings in these cases, unless reversed, will result in these pipelines not recovering legitimate and recognized costs of construction. For the future, consistent application of these rulings is likely to have several unintended and undesirable consequences.

The rulings here will likely have the effect of lengthening the time and increasing the cost to complete a project. For instance, to bring new projects to market as quickly as possible and at a reasonable cost, pipelines typically spend substantial dollars for procuring contractors and materials well before construction is expected to begin. Recently, construction supplies and contractors were backlogged for years in advance and pipelines were forced to place firm orders well in advance of the anticipated construction start date. While the pipelines clearly understand that such early construction-related expenditures do not in any way pre-judge whether the Commission will grant a certificate, the expenditures are necessary for the pipeline to meet the market's needs if the Commission does grant a certificate. If the Commission's AFUDC ruling holds, pipelines may be forced to delay the purchase of long-lead materials at the expense of the timeline and completion date, or pay premiums for the delivery of just-in-time units and priority slots in manufacturing queues.

Moreover, denying pre-filing costs incurred in constructing new pipelines may have the unintended result of promoting the filing of less complete applications with the Commission. All stakeholders benefit from the pre-filing work pipelines perform to make the certificate application more complete. The pre-filing process was designed to obtain more stakeholder input on the route and construction early in the process to make the Commission's environmental review more transparent, complete and efficient, but its orders here create a disincentive for pipelines to use the pre-filing procedures to address stakeholder concerns prior to filing certificate applications. The AFUDC ruling appears to give pipelines a Hobson's choice of (1) forgoing the pre-filing process altogether and submitting certificate applications as early in the project timeline as possible or (2) using the pre-filing process for its efficiency and effectiveness while bearing the financing cost of all pre-filing development expenditures. This will make the

Commission's review of certificate applications more complex since stakeholder and environmental concerns would be addressed primarily during the certificate process. Furthermore, this process will prolong the time required for reviewing a certificate application and building the project.

B. The Commission's AFUDC Rulings Violate Standards of Reasoned Decisonmaking under the Administrative Procedure Act.

The Commission's orders may be set aside if found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A) (2000). The "arbitrary and capricious" standard requires that a reviewing court ensure that the Commission has "examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(internal quotation marks and citation omitted). Under this standard, "an agency changing its course must supply a reasoned analysis." A*ccord*, *Ramaprakash v. FAA*, 346 F.3d 1121, 1124 (D.C. Cir. 2003)(agencies free to change course in accordance with expertise and experience, but must provide "reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored.")(quoting *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970)).

In addition, an agency has an obligation to explain its decision. *See, e.g., Columbia Gas Transmission Corp. v. FERC*, 448 F.3d 382, 387 (D.C. Cir. 2006)(citing *SEC v. Chenery Corp.*, 332 U.S. 194, 196-97 (1947) for the propositions that "[i]t will not do for a court to be compelled to guess at the theory underlying the agency's action; nor can a court be expected to chisel that which must be precise from what the agency has left vague and indecisive."). An agency must engage the arguments raised and answer legitimate objections. *E.g., Canadian Ass'n of Petroleum Producers v. FERC*, 254 F.3d 289, 299 (D.C. Cir. 1999); *NorAm Gas Transmission Co. v. FERC*, 148 F.3d 1158, 1165 (D.C. Cir. 1990).

INGAA submits that the Commission's *Southern* and *Ruby* orders fall short under these standards on a number of grounds.

First, the Commission puts misplaced reliance on an accounting release issued more than four decades ago. That release, which the Commission variously describes as a "regulation" and "guidance," *see Ruby*, 128 FERC ¶ 61,224 at P 87, states a number of propositions, but in no way attempts to justify or explain why, for instance, it should be a rule that interest, to be recoverable, must be based on costs that "are continuously incurred on a planned progressive basis," or why the certificate application date should be the beginning date for AFUDC accruals. Nor does it attempt to define "construction costs," a term that begs fleshing out in this regulatory context. These are not, of course, legitimate criticisms of an "accounting release," but it is error for the Commission to give AR-5 the same sort of *stare decisis* effect as if it were a precedent arising out of an adjudication or a rulemaking proceeding. Further, the Commission's orders do not add any significant explanation or justification for applying AR-5 as if it were a regulation or reasoned precedent. For example, the Commission asserts that "AFUDC should not be accrued on expenditures for materials and supplies, including progress and other payments incurred for the manufacture of pipe, purchased prior to the initiation of construction." *Ruby* at P 90. That is not self-evidently true, and the Commission does not explain why it should be so. The Commission also asserts that "[p]reliminary survey and investigation costs, including those which may be incurred before or during the pre-filing process, are costs incurred prior to the commencement of construction and therefore would not constitute construction costs eligible for the accrual of AFUDC." That proposition is also question begging, and lacks any reasoned explanation in terms of the Commission's construction policy or ratemaking principles.

Most importantly, the Commission's reliance on AR-5 is misplaced because AR-5 is so patently outdated. It ignores the entire evolution of the pre-filing process at the Commission, and the bifurcation of two separate processes, with much of the construction related tasks that used to follow the certificate filing now falling within the pre-filing time frame. The Commission erred in putting so much stock in an accounting release whose author had no opportunity to consider the implications of construction related costs being incurred during an officially sanctioned pre-filing period. Moreover, even within the four corners of AR-5, the Commission did not address the question why natural gas pipeline expenditures during the pre-filing process are not directly analogous to the expenditures undertaken after the Commission issues a "preliminary permit" for a hydroelectric licensing project. AR-5 explicitly permits capitalization of interest during the preliminary permit period that precedes a hydroelectric license application in the hydroelectric context. It was arbitrary for the Commission to ignore that analogous regulatory context.

In addition, the Commission's arbitrary line drawing between pre-filing and post-certificate expenditures finds no support in GAAP. As noted above (see note 1), FAS 34 has long recognized the principle that the interest cost on expenditures for an asset is capitalizable for the period during which activities required to get the asset ready for its intended use are underway, expenditures are being made, and interest is being incurred. The Commission makes no attempt to justify its post-certificate distinction here in terms of pertinent GAAP.

Finally, in both orders the Commission ruled that the pipeline did not present sufficient detail to demonstrate that the pre-filing costs incurred were in fact construction costs. *Southern,* 128 FERC ¶ 61,224 at P 44; *Ruby*, 128 FERC ¶ 61,224 at P 90. The Commission provided no guidance, however, on the detail required to justify AFUDC accrual prior to the certificate application. Nor did the Commission provide any principled guidance on what it considers to be construction-related costs that are eligible for AFUDC.

In sum, the Commission orders do not meet the APA standards of reasoned decision making.

CONCLUSION

INGAA requests that the Commission grant rehearing and reverse its orders denying Southern and Ruby Pipeline recovery through the AFUDC mechanism of funds spent in connection with their projects prior to the date of their certificate applications.

Respectfully submitted,

Joan Dreskin
General Counsel
Timm Abendroth
Dan Regan
Attorneys
Interstate Natural Gas
Association of America
10 G Street, NE
Suite 700
Washington, DC 20002
(202) 216-5928
jdreskin@ingaa.org
tabendroth@ingaa.org

September 28, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of September, 2009, pursuant to the Commission's regulations governing service at 18 C.F.R. § 385.2010, a copy of the foregoing “Request of the Interstate Natural Gas Association of America for Rehearing” was served electronically on all parties listed in the Commission's official service list for these proceedings.

______/s/______
Timm Abendroth