



EUCI presents a course on:

THE EVOLUTION AND FUTURE OF FERC NGL PIPELINE REGULATION

December 10, 2012 • Hyatt Regency Houston • Houston, TX

Post-Course Workshop

NGL Contracts

Tuesday, December 11, 2012



EUCI is authorized by IACET to offer 0.7 CEUs for the course and 0.4 CEUs for the workshop.

December 10, 2012

OVERVIEW

This course will provide an in-depth, practical review of the regulatory landscape of regulation by the Federal Energy Regulatory Commission of (FERC) of natural gas liquids (NGL) pipelines. It will provide an extensive analysis of the jurisdictional issues related to NGL pipelines, at both a federal and state level as well as a discussion of which activities by NGL pipelines would be subject to regulation. It will discuss standards of conduct, issues related to ratemaking, ways to minimize disputes with ratepayers and regulatory issues that need to be considered in the acquisition context.

LEARNING OUTCOMES

- Define, compare and differentiate FERC regulations that govern transportation of liquids by pipeline, with a focus on NGLs
- Identify the history and evolution of FERC and its effects on the future
- Describe cases and events that have shaped regulations
- Discuss the standards of conduct of FERC processes and procedures
- Apply case studies to situations to determine effects on regulations
- Evaluate ratemaking processes and cases shaping current ratemaking processes
- Distinguish between case study outcomes on past, current and future FERC procedures
- Identify and discuss the future of energy liquids and FERC regulations
- Articulate how FERC regulations have evolved and will impact the future of energy transit

WHO SHOULD ATTEND

- Oil and gas attorneys and legal personnel
- Pipeline, storage, oil and gas engineers
- FERC lawyers, experienced and new
- Energy analysts
- Energy marketers
- Energy Financing firms and individuals
- Commodity and energy market individuals
- New employees of pipeline, oil and gas companies
- Regulators and overseers of energy operations and activities
- Individuals seeking a full picture of energy transit

IACET



EUCI has been approved as an

Authorized Provider by the International Association for Continuing Education and Training (IACET), 1760 Old Meadow Road, Suite 500, McLean, VA 22102. In obtaining this approval, EUCI has demonstrated that it complies with the ANSI/IACET Standards, which are widely recognized as standards of good practice internationally.

As a result of its Authorized Provider membership status, EUCI is authorized to offer IACET CEUs for its programs that qualify under the ANSI/IACET Standards.

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Requirements for Successful Completion of Program

Participants must sign in/out each day and be in attendance for the entirety of the course to be eligible for continuing education credit.

Instructional Methods

This course will be incredibly valuable and will provide attendees the best learning experience through lecture based power point, interactive case studies, "quizzes" that will put students in hypothetical situations and distinguish effects on regulations and situational learning points to best present the material.

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PROGRAM AGENDA

MONDAY, DECEMBER 10, 2012

Registration and Continental Breakfast: 7:30 – 8:00 a.m.

Course Timing: 8:00 a.m. – 5:00 p.m.

Morning Break: 10:00 a.m. – 10:15 a.m.

Group Luncheon: 12:00 – 1:00 p.m.

Afternoon Break: 3:00 p.m. – 3:15 p.m.

1. Industry Overview

- Types of NGLs
- Production
- Processing
- Transportation

2. Scope of Jurisdiction – Federal Level

- Who has it – FERC, the STB, or someone else?
- Over what liquids movements does FERC have jurisdiction?
 - What is “oil”?
 - Gulf Central Pipeline Company, 50 FERC ¶ 61,381
 - Does commodity being transported affect energy markets?
 - Can commodity being transported be used as a fuel?
 - Overview of FERC decisions
- Over what liquids movements does the STB have jurisdiction?
 - Commodities other than “water, gas, or oil”
- What happens if neither FERC nor the STB has jurisdiction?
- Discussion of jurisdiction attaching to movements of specific NGLs
- Jurisdictional versus non-jurisdictional service
 - Is everything a pipeline does jurisdictional?
 - PTO/PA cases
 - Bridger and the exchange cases
 - Is storage jurisdictional?
 - Lakehead and the wide-spot in the pipe argument
 - TEPPCO and storage at the end of the pipe
- Methods of ascertaining certainty in jurisdiction – Petition for Declaratory Order

3. Scope of Jurisdiction – State Level

- Who has it?
 - State agency that regulates oil pipelines may not have jurisdiction
 - Assessment of relevant state statutes is necessary
 - Possibility of common law regulation
- Implications of overlapping jurisdiction

4. The Scope of FERC’s Jurisdiction under the ICA

- What is “common carriage”?
- What is “transportation” and “interstate commerce”?
 - Essential character and “fixed and persisting intent”
 - Exceptions and limits to FERC jurisdiction -- Pipelines Cases, Uncle Sam Oil and their progeny
 - Case Studies: Interstate or intrastate?
 - NGL originating in one state and delivered to fractionator in the same state?
 - NGL originating in one state and delivered to a different system for transportation to another state?
 - NGL originating in one state blended into a refined product stream which then leaves the state?
 - NGL originating in one state, placed into storage some of which is then transported to a different state.?
 - NGL transported to another state?

5. Standards of Conduct

- Posting of rates and terms of service
- “Just and reasonable” rates and practices
- Allocation of capacity
- Service upon reasonable request – connections and competition
- Discrimination and preferences
- Commodity specifications and “banks”
- Separation of functions and confidentiality

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PROGRAM AGENDA

MONDAY, DECEMBER 10, 2012 (CONTINUED)

6. Transactions with Affiliates

- Specific accounting standards (Uniform System of Accounts) governing transactions with affiliates
- May transactions with affiliates reflect market conditions?
 - Edgar standard on the electric side
 - ALJ ruling in Mid-America case
- The evolving nature of this concept
- Importance of proper documentation

7. Overview of Ratemaking

- How to set initial rates
 - Unaffiliated third-party shipper
 - Cost of service
- Methods of changing existing rates
 - Indexing
 - Working of the mechanism
 - Review standard for indexed rates
 - Cost-of-service rates
 - Major elements of cost of service
 - Market-based rates (Order No. 572)
 - Standard
 - Settlement rates – Last but not least

8. Acquisition Due Diligence—A Regulatory Perspective

- State regulated assets:
 - May require a certificate of public necessity and convenience
 - May require specific approval by the regulatory authority
 - Critical to review relevant statutes and regulations
- FERC regulated assets:
 - NGL pipelines do not require a certificate or approval
 - FERC regulations relating to ratemaking may significantly impact asset value.
- Original cost
 - Implications of the original cost standard
 - Exceptions to the original cost standard
 - Documents necessary to justify rates under an original cost standard
- Grandfathered rates
 - What are grandfathered rates?
 - When do grandfathered rates matter?
 - What materials does a pipeline need to support grandfathered rates?

9. Rate Design

- Billing determinants (or volume)
 - How should volume be projected for an existing pipeline?
 - Are new pipelines required to use capacity?
 - White Cliffs decision
 - Keystone decision
 - Allocating cost over multiple movements
 - Distances based rates
 - Postage stamp rates
 - Rate setting in the presence of different levels of competition
 - The conceptual problem with FAC in the presence of different levels of competition
 - Ramsey Pricing: the theoretical ideal
 - Revenue credit
 - Iterative discounting

10. New Capacity and Preferential Capacity Rights

- Origin and basis
- Current standards
- Case study – structuring and running an open season

11. How to Handle Disputes before FERC

- Typical sources of dispute – rates, connections, service, quality
- Possible paths – FERC hot line, complaints, protests
- Settlement and litigation

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INSTRUCTORS

Michelle Boudreaux, Partner, Vinson & Elkins

Michelle Boudreaux's principal area of practice is compliance with federal and state law governing the transportation of liquids by pipeline (crude oil, natural gas liquids, and refined petroleum products). Michelle has represented clients in multiple, complex rate litigation proceedings before federal and state agencies, including the Federal Energy Regulatory Commission (FERC) and the Regulatory Commission of Alaska. She advises clients on strategic and regulatory compliance matters, including those related to greenfield and brownfield liquids pipelines, working on numerous projects for the transportation of liquids from diverse supply areas, including the Permian Basin, the Bakken Shale, the Marcellus Shale, the Utica Shale, the Eagle Ford Shale, and the Cushing hub. Michelle has also advised clients on regulatory issues related to intermodal liquids transportation projects, including pipeline-rail and pipeline-tanker projects.

Elizabeth Kohlhausen, Associate, Vinson & Elkins

Elizabeth Kohlhausen advises crude oil and liquids pipeline clients in various regulatory matters and has represented them in these matters before FERC and various state agencies. She is well-versed in the development of liquids pipeline projects (both interstate and intrastate), including the conduct of open seasons, the preparation of related documentation (including transportation service agreements and throughput and deficiency agreements) and in obtaining regulatory assurances from FERC with respect to rate design and terms and conditions of service. She also regularly advises clients on operational issues and tariff modifications related thereto.

Dr. Michael Webb, Director, Regulatory Economics Group

Michael Webb provides economic and regulatory advice to crude oil, refined product and liquid pipeline companies in both North America and internationally. He has provided expert testimony more than 30 times at FERC as well as before multiple state regulatory agencies. His testimony has addressed all aspects of cost-of-service, cost of capital, rate design, and he has testified on behalf of pipelines seeking market-based rates. He has also advised firms conducting regulatory due diligence for oil pipeline acquisitions. Dr. Webb holds a PhD in economics from George Mason University where he teaches undergraduate and graduate courses in Law and Economics, the Economics of Regulation and the Economics of Energy.

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NGL CONTRACTS

TUESDAY, DECEMBER 11, 2012

7:30 – 8:00 a.m. Registration and Continental Breakfast

8:00 a.m. – 12:00 p.m. Workshop Timing

OVERVIEW

This workshop will address fundamental terms and conditions of various categories of NGL contract – including those whose subject matter includes gathering, treating, processing, construction, operating, fractionating, storing, marketing, and transporting – and how they function and interrelate internally. The manner in which the contracts serving these various functions should dovetail with one another, as well as how to identify any terms or conditions that may conflict, will be covered. In addition, the negotiation and drafting of various contracts, as well as a review of recent developments on this subject, will be highlighted in connection with this program.

This half-day workshop will be conducted and led by experienced attorneys with Bureson LLP, both of whom brings to bear unique and diverse perspectives, experiences, and insights concerning the NGL contracting process.

LEARNING OUTCOMES

- Increase knowledge of NGL contracts
- Discuss the NGL contracts process
- Address the fundamental terms and conditions
- Describe the various functions of NGL contracts
- Practice NGL contracting and negotiating processes
- Discuss legal conflicts, litigation matters, and resolution procedures

AGENDA

8:00 – 8:15 a.m.

Introductions

8:15 – 9:45 a.m.

Introduction to NGL Contracts (Robert S. Ballentine)

- Categories and General Features of Foundational Agreements
 - Gas Purchase Contracts
 - Gathering, Transportation and Exchange Agreements
 - C&O Agreements
 - Gas Processing Agreements
 - Sales Agreements
 - Storage Agreements
 - Fractionation Agreements
 - Miscellaneous Other Agreements
- Statutory and Regulatory Considerations
 - Federal
 - State
 - Local
- Relationships Among NGL Contracts
 - Multiple Parties Issues
 - Issues of Consistency and Reconciliation
 - Drafting Forum Selection and Choice-of-Law Terms
 - Drafting Pitfalls
- Mediation, Arbitration and Litigation of NGL Contracts
 - Issues of Contract Construction and Interpretation
 - Drafting ADR Clauses
- Recent Developments and Trends in Case Law

9:45 – 10:00 a.m.

Morning Break

10:00 – 11:30 a.m.

Drafting and Negotiating NGL Contracts (Philip M. Kinkaid)

- Overview
- Drafting and Negotiating Considerations
 - Changing Market Conditions
 - Impact of New Infrastructure Projects
 - Common Elements to be Considered
 - Differences Among NGL Contract Types
- Frequently-Negotiated Provisions
 - "Standard" Positions and Creative Compromises

11:30 a.m. – 12:00 p.m. Panel Discussion (Robert S. Ballentine & Philip M. Kinkaid)

- Questions and Answers

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WORKSHOP INSTRUCTORS

Robert Ballentine, LLM, Partner, Burleson LLP

Mr. Ballentine has more than 25 years of commercial litigation experience, primarily concerning disputes over upstream and midstream energy contracts, such as exploration agreements, joint operating agreements, wellhead sales agreements, gas processing contracts, natural gas purchase and sales agreements, maintenance and service agreements, natural gas and natural gas liquids transportation agreements, and other related contracts.

He has represented energy clients in complex litigation, including class actions in both state and federal courts, as well as litigation over state, federal, and private mineral royalty claims, natural gas measurement False Claims Act qui tam litigation, gas processing, gas plant, gas pipeline litigation and arbitrations, as well as electric power contract disputes. His litigation experience includes toxic tort and product liability matters, as well as Sherman Act antitrust claims, and shareholder derivative and securities litigation. He has represented clients in insurance litigation, tax litigation, real estate, and pipeline condemnation matters and mineral partnership disputes. He has also represented clients in admiralty litigation, as well as in a wide variety of adversary proceedings before United States bankruptcy courts.

He has significant regulatory practice experience in the natural gas pipeline, telecommunications and electric power industries, including administrative law and litigation, and certificate applications before the Public Utility Commission of Texas (PUCT) and the Federal Energy Regulatory Commission (FERC).

In addition, Mr. Ballentine is an adjunct professor of law at the University of Houston Law Center where he teaches a course in Nuclear Energy Law and Policy.

Philip M. Kinkaid, Partner, Burleson LLP

Mr. Kinkaid has over 25 years of experience as an energy and business attorney. He has assisted clients in structuring and negotiating numerous types of midstream energy contracts, including ones for the purchase, gathering, transportation and processing of NGLs, natural gas and crude oil. He has represented clients in the acquisition and divestiture of a variety of midstream energy facilities, including pipelines, processing plants and terminals; the greenfield development of a major cross-border interstate natural gas pipeline; structured financings of midstream assets; and transactions involving environmentally-impacted former midstream sites.

Mr. Kinkaid has also represented clients in acquisitions and divestitures of a broad variety of other assets and businesses, including oil and gas properties, refineries, manufacturing facilities and oil-field service companies. He has assisted clients in negotiating and implementing structured financings, synthetic leases, tax-credit monetizations and other structured or tax-advantaged transactions. He has significant experience in the use of partnerships and limited liability companies for a broad range of transactions, from the formation of start-up companies and the reorganization of family owned businesses, to the structuring and negotiation of multinational joint ventures. His real estate practice has primarily focused on acquisitions and divestitures of real property, including current and former industrial facilities; brownfield redevelopment issues; complex title issues; and the preservation and transfer of water rights.

Upon graduating from law school, Mr. Kinkaid served as a judicial law clerk to the Hon. Malcolm R. Wilkey of the U.S. Court of Appeals for the District of Columbia Circuit. He practiced law for 17 years with Vinson & Elkins L.L.P. in Houston. Prior to joining Burleson LLP, he was an independent counsel to ExxonMobil Corporation's real estate law group from 2004 to 2009.

PROCEEDINGS

The proceedings of the course will be published, and one copy will be distributed to each registrant at the course.

EVENT LOCATION

A room block has been reserved at The Hyatt Regency Houston 1200 Louisiana St., Houston, TX 77002, for the nights of December 9-12, 2012. Room rates are \$179, plus applicable tax. Call 713-654-1234 for reservations, and mention the EUCI course to get the group rate. The cutoff date to receive the group rate is November 19, 2012, but as there are a limited number of rooms available at this rate, sometimes the room block will close sooner. **Please make your reservations early.**

REGISTRATION INFORMATION

REMEMBER: EVERY FOURTH REGISTRANT IS FREE

For instant registration, call 303-770-8800 or fax the registration form to 303-741-0849.

Register Three; Send Fourth Free!

Any organization wishing to send multiple attendees to this course may send one FREE for every three delegates registered. Please note that all registrations must be made at the same time to qualify.

All cancellations received on or before November 9, 2012, will be subject to a \$195 processing fee. Written cancellations received after this date will create a credit of the tuition (less processing fee) good toward any other EUCI event or publication. This credit will be good for six months. In case of event cancellation, Electric Utility Consultants' liability is limited to refund of the event registration fee only. For more information regarding administrative policies such as complaints and refunds, please contact our offices at 303-770-8800.

EUCI reserves the right to alter this program without prior notice.

MAIL DIRECTLY TO:

Electric Utility Consultants, Inc. (EUCI)
4601 DTC Blvd., Ste. 800
Denver, CO 80237

FAX TO:

303-741-0849

PHONE:

303-770-8800

ONLINE:

www.euci.com

PLEASE REGISTER THE FOLLOWING

- The Evolution and Future of FERC NGL Pipeline Regulation
December 10, 2012: US \$895
Early bird on or before November 30, 2012: US \$795
- Discounted registration for attending both The Evolution and Future of FERC NGL Pipeline Regulation and NGL Contracts post-course workshop, December 10-11, 2012: US \$1395
Early bird on or before November 30, 2012: US \$1195
- Post-course workshop only:
- NGL Contracts, December 11, 2012: US \$595
Early bird on or before November 30, 2012: US \$495

ENERGIZE WEEKLY

EUCI's *Energize Weekly* e-mail newsletter compiles and reports on the latest news and trends in the energy industry. Newsletter recipients also receive a different, complimentary conference presentation every week on a relevant industry topic. The presentations are selected from a massive library of more than 1,000 current presentations that EUCI has gathered during its 25 years organizing conferences.

- Sign me up for *Energize Weekly*.**

How did you hear about this event? (direct e-mail, colleague, speaker(s), etc.) _____

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Check here if you have any dietary or accessibility needs. We will contact you for more details.

PAYMENT METHOD

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