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April 7, 2015

FOR IMMEDIATE RELEASE

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Van Ness Feldman Prevails on Behalf of MoGas in U.S. Court of Appeals

WASHINGTON, D.C. –Led by [Paul Korman](#), Amy Beizer, and [Emily Pitlick](#), Van Ness Feldman successfully represented MoGas Pipeline LLC (MoGas) as an intervenor in *Missouri Public Service Commission v. Federal Energy Regulatory Commission* (FERC). The U.S. Court of Appeals for the District of Columbia Circuit found that FERC properly applied its “benefits exception” test precedent when it permitted MoGas to include an acquisition premium in its initial rate base.

An acquisition premium is the amount greater than a regulated facility’s net book value that is paid to acquire it. Generally, the recovery of an acquisition premium in pipeline rates is not allowed unless the pipeline meets FERC’s two-part “benefits exception” test. The test permits recovery of an acquisition premium if the pipeline facility has been converted to a new public use and the pipeline can demonstrate that the acquisition will provide substantial, quantifiable benefits to ratepayers.

The court was asked to review FERC’s treatment of an acquisition premium associated with a 5.6 mile stretch of pipeline on MoGas’s system. MoGas’s predecessor converted the pipeline segment, which had been an inactive oil pipeline facility, to natural gas use for the first time following a certificate of public convenience and necessity issued by FERC in 2002. The Missouri Public Service Commission has been fighting the inclusion of that acquisition premium in MoGas’s rates since FERC certificated MoGas to go into interstate service in 2007.

Judge Rogers wrote the opinion for the panel, which included Chief Judge Garland, with a concurrence issued by Judge Millet. Paul Korman argued the case for MoGas. According to Mr. Korman “this is an important decision for the industry because it reaffirms FERC’s ability to certify existing facilities that have been repurposed for new uses.” Ms. Pitlick noted that “pipeline conversions are becoming increasingly important as America reassesses its energy infrastructure needs.”

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