
ORAL ARGUMENT NOT YET SCHEDULED

**In the United States Court of Appeals
for the District of Columbia Circuit**

Nos. 16-1013, 16-1018, 16-1022, 16-1025 and 16-1026

BP PIPELINES (ALASKA) INC., *ET AL.*,
Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION
AND UNITED STATES OF AMERICA,
Respondents.

ON PETITIONS FOR REVIEW OF AN ORDER OF THE
FEDERAL ENERGY REGULATORY COMMISSION

BRIEF FOR INTERVENORS STATE OF ALASKA

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), Intervenor submits:

A. Parties and Amici

The parties and intervenors appearing before this Court are identified in Petitioners' brief.

B. Ruling Under Review

BP Pipelines (Alaska) Inc., Order on Initial Decision, Opinion No. 544, 153 FERC ¶ 61,233 (2015) [JA 854-923].

C. Related Cases

Other than the proceedings referenced in Petitioners' Certificate as to Parties, Rulings and Related Cases, counsel is not aware of any related cases pending before this Court or any other court.

/s/ John M. Ptacin
John M. Ptacin

September 30, 2016

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GLOSSARY OF ACRONYMS AND ABBREVIATIONS

FERC or Commission	Federal Energy Regulatory Commission
TAPS	Trans Alaska Pipeline System
IPA Report	Independent Project Analysis Inc. Report
Order	<i>BP Pipelines (Alaska) Inc.</i> , 153 FERC ¶ 61,233 (2015)
JA	Joint Appendix
Carriers	Trans Alaska Pipeline System Carriers
Initial Decision	<i>BP Pipelines (Alaska) Inc.</i> , 146 FERC ¶ 63,019 (2014)

STATEMENT OF THE ISSUES

1. After an extensive review, the Federal Energy Regulatory Commission ("FERC") ruled the Trans Alaska Pipeline System Carriers ("Carriers") imprudently spent over \$700 million on a project called "Strategic Reconfiguration;" a project that needlessly electrified and automated pump stations along the Trans Alaska Pipeline System ("TAPS"). Does the record contain substantial evidence to support the FERC decision?

2. The Carriers paid additional 2006 ad valorem taxes to the State of Alaska and local municipalities in 2010. The Carriers tried to include this 2006 expense in 2010 rates. Did FERC correctly rule the Carriers cannot recover the additional 2006 taxes from 2010 ratepayers?

3. In future cases, FERC may need to decide whether Strategic Reconfiguration costs associated with Pump Station 1 can be included in tariff rates. Does the Court need to review this issue now?

STATUTORY PROVISIONS

Pertinent statutes and regulations are contained in Petitioner's Addendum and Respondent's Addendum.

STATEMENT OF THE CASE

I. SUMMARY

This case presents three issues. First, the record supports FERC's conclusion

that the Carriers imprudently spent over \$700 million on Strategic Reconfiguration. Second, FERC correctly held the Carriers' 2006 tax liabilities should not be paid by 2010 ratepayers. Third, the Court should not prematurely determine whether Strategic Reconfiguration costs associated with Pump Station 1 are prudent.

II. FACTS AND PROCEEDINGS

A. Pipeline overview.

For thirty years, gas-turbine pumps efficiently pushed oil through TAPS. Initial Decision PP 11-12, ATC-19 at 13-14 [JA 931-932, 3541-3542].¹ Between 1977 and 2000, the reliability rate for TAPS and the gas-turbine pumps was 99.6%. AT-165 at 4 [JA 2198]. The gas-turbine pumps were located at pump stations where on-site personnel ran the pumps with assistance from remote operators. Initial Decision PP 13-14 [JA 932-933].

By the mid-1990's, Alyeska—the Carriers' agent—had performed several engineering studies to determine whether they could: (1) electrify the mainline pumps; (2) de-staff the pump stations through automation; (3) reduce other operating and maintenance expenses at the pump stations; and (4) bring the pump

¹ FERC's Opinion 544 (“Order”) affirmed the Administrative Law Judge's Initial Decision in this case, 146 FERC ¶ 63,019 (2014) (“Initial Decision”). Citation to the Initial Decision is appropriate as it forms the underlying basis of FERC's findings and conclusions. *See Cities of Bethany et. al. v. FERC*, 727 F.2d 1131, 1144 (D.C. Cir. 1984) (held that Courts may rely upon a detailed and thorough Initial Decision affirmed by FERC as support for FERC's findings and conclusions).

stations up to fire code standards. Initial Decision P 337, SOA-135 at 16 [JA 1038-1039, 2111]. In one of these studies—the Bailey Report—Alyeska examined six alternatives. Initial Decision PP 152-197, 231, 252, 311, SOA-542 at 41-48, ATC-110 at 7-8, ATC-135 at 11 [JA 982-993, 1002, 1010, 1026, 3796-3803, 2192-2193, 2202]. After a multi-year study, the Bailey Report recommended “Alternative D,” which promoted three things: (1) modest changes to pump station control systems; (2) keeping the gas-turbine pumps in place; and (3) keeping maintenance personnel present at the pump stations. *Id.* See also Initial Decision P 341 [JA 1039-1040]. “Alternative D” recommended a three-to-four-year, \$51 million project with minimal disruptions to pipeline operations, which would save \$20 million in various costs per year. *Id.* The Bailey Report specifically discarded “Alternative F,” which studied having no personnel present at the remote pump stations. Initial Decision PP 152, 172, 309, 352 [JA 982, 986-987, 1025, 1042]. Alyeska operations personnel and contractors assisted in the Bailey Report. Initial Decision P 338, SOA-135 at 37 [JA 1039, 2132].

As a result of Alyeska’s studies, by 2000, the Carriers knew: (1) the current TAPS configuration—with gas-turbine pumps—was working well; (2) economics did not support major changes to the pump stations; (3) switching out the gas-turbine pumps for electric pumps had been rejected as non-economic; (4) fire suppression systems would have to be upgraded; (5) “Alternative D”—which

recommended automation of existing pumping equipment—was an economical course of action; (5) automation work should occur one pump station at a time to learn from mistakes; (6) skilled laborers required for automation were not readily available; and (7) automation projects would require significant brownfield work (demolition and/or renovation of existing structures). Initial Decision at PP 223-224, 227, 275-282, ATC-105 at 16-17, ATC-141 at 3, SOA-135 at 12, 15, 37, 81 [JA 999, 1000-1001, 1017-1019, 4150-4151, 2212, 2107, 2110, 2132, 2176].

B. The Carriers abandon Alyeska’s studies.

Despite Alyeska’s comprehensive studies concluding that major changes to the pump stations and the gas-turbine pumps would not be economic, high-level management advocated departing from those findings in 2001, with little or no explanation. *Id. See also* Initial Decision P 344 [JA 1040-1041]. In October 2001, Dick Rabinow, then President of ExxonMobil Pipeline Company, favored electrification of all the pump stations, regardless of their proximity to commercial power. Initial Decision at P 344, ATC-20 at 24:1-4 [JA 1040-1041, 3619]. Bill Howitt, Alyeska’s Senior Vice President, advocated using a “clean sheet approach which could employ an entirely new pump station.” Initial Decision P 344, ATC-137, ATC-19 at 44 [JA 1040-1041, 2204-2205, 3567]. This “clean sheet” approach treated the existing pump station facilities as if they had never been built. Initial Decision P 327, ATC-19 at 44 [JA 1035, 3567].

In shifting to the clean sheet approach, the Carriers did none of the following: (1) perform economic analysis justifying electrifying the pumps; (2) revise prior studies rejecting electric pumps; or (3) contravene the Bailey Report “Alternative D.” Initial Decision P 348, 352, SOA-143 at 16 [JA 1041, 1054, 2188]. In fact, around the time of “clean sheet,” one of the Carriers rejected electric motor pumps on a separate pipeline project where there was no access to a commercial electrical grid (as is the case with several of the TAPS pump stations). Initial Decision P 349, SOA-542 at 33, SOA-601 at 7, 18 [JA 1041-1042, 3793, 2278, 2281]. Within a month of clean sheet, the Carriers were claiming—without support—that clean sheet would substantially reduce pump station staffing. Initial Decision P 345 [JA 1041].² This clean sheet approach came to be known as “Strategic Reconfiguration.” ATC-265, ATC-270 [JA 3162-3163, 3177-3185].

C. Strategic Reconfiguration proceeds rapidly for no reason.

The Carriers took very little time to decide Strategic Reconfiguration was the correct course of action. Initial Decision P 336, 441, ATC-141 at 38 [JA 1038, 1073, 2215]. The Carriers devised a schedule, only allowing one year for planning and requiring simultaneous work on all the pump stations. Initial Decision P 186 [JA 990-991]. Strategic Reconfiguration was premised on these cost reductions: (1) reducing personnel; (2) reducing operating and maintenance costs (\$40 to \$50

² At the time of the hearing in 2009, significant personnel remained at the pump stations. SOA-706 [JA 4210-4213].

million a year); (3) receiving one-time bonus tax depreciation (\$10 million); and (4) avoiding a relatively small \$20 million cost to correct fire code violations.

Initial Decision PP 144, 407, 480 fn. 327, 487, 1130, SOA-150 at 8 [JA 980, 1060-1061, 1087, 1090, 1288, 4190].

Unlike the Bailey Report—where conceptual engineering took years to develop—the Carriers spent only three months on Strategic Reconfiguration conceptual engineering. Initial Decision PP 364-375, 444, ATC-135 [JA 1046-1050, 1075, 2200-2203]. This new round of conceptual engineering lacked any input from Alyeska operations and engineering experts and did not address whether there was a need for extensive overhauls to the pump stations. Initial Decision PP 446-447, 451-453, SOA-275 at 37, SOA-543 at 10 [JA 1075-1076, 1077-1078, 3508, 3811].

Rushing Strategic Reconfiguration was unnecessary because the pump stations remained in excellent condition. Order P 22, SOA-17 at 16, SOA-19 at 2 [JA 872, 2223, 2226]. At the time, Alyeska performed certain maintenance on the pump stations “solely for training purposes.” SOA-23 at 33 [JA 2208]. In 2002, one of Alyeska’s chief engineers—Jerry DeHaas—reported that the existing gas-turbine pumps were in excellent condition and would continue to be so for a long time. SOA-19, SOA-25 at 95, Initial Decision PP 377, 482-484 [JA 2225-2227, 2272, 1050, 1088-1090]. Spare parts were plentiful, and Alyeska retained skilled

gas-turbine pump technicians at the time it pursued Strategic Reconfiguration.

Initial Decision P 485, SOA-19 at 2 [JA 1090, 2226].

D. The Carriers fail to hire competent project managers and contractors.

Consistent with their rush to complete Strategic Reconfiguration, the Carriers made imprudent project manager and contractor choices. Order P 23, Initial Decision P 660 [JA 872-873, 1141]. The Carriers selected a project manager whose pipeline project management experience was limited to installing a two-mile, six-inch pipe at a total cost of less than \$2 million. Initial Decision P 502, Order P 23 [JA 1095-1096, 872-873]. The project manager reported directly to Alyeska's President and Chief Executive Officer, not Alyeska's operations or engineering departments. Initial Decision P 1092 [JA 1274]. Even the Carriers concluded the project manager selection adversely affected the project. Order P 23, SOA-172 at 1 [JA 872-873, 4197]. Complicating matters, the project manager selected an individual to lead automation projects that had never worked on Alyeska's control system. Initial Decision P 732 [JA 1166-1167].

In January 2003, engineering began with contractors ill-suited for the work. Initial Decision P 660 [JA 1141]. The Carriers hired SNC-Lavalin to engineer the electrification of the pump stations. Initial Decision P 521-523, 659, ATC-428, SOA-232 at 1 [JA 1101-1102, 1140, 2302-2307, 2308]. But the Carriers knew SNC-Lavalin had a poor understanding of the scope of the work at the time they

were hired. Initial Decision P 660, SOA-217 [JA 1141, 4201-4202]. SNC-Lavalin—a Canadian firm—had little to no experience in Alaska or the Arctic. Initial Decision P 660, SOA-217, SOA-1 at 153:1-15 [JA 1141, 4201-4202, 3504]. The Carriers ignored criticisms of SNC-Lavalin’s engineering work from high-level Alyeska engineers like Jerry DeHaas. Order P 8, SOA-284 [JA 862, 2313-2315]. The Carriers routinely ignored Alyeska’s concerns about SNC-Lavalin’s cost estimates. Initial Decision PP 544-545, Order P 19, SOA-277 at 1, SOA-11 at 28 [JA 1107-1108, 868-870, 3225, 3349]. SNC-Lavalin did not consult local contractors, and SNC-Lavalin inexplicably failed to incorporate Alaska fire and gas regulations into its designs. Initial Decision PP 523, 649 [JA 1102, 1135-1136]. In 2003, SNC Lavalin concluded Strategic Reconfiguration would cost the Carriers \$252 million (and the Carriers ultimately approved that cost). Initial Decision P 833, SOA-55 at 1 [JA1197, 3171].

E. The Carriers held high level meetings—prior to sanction—where they discussed the shortfalls of Strategic Reconfiguration engineering.

In October 2003, the Carriers, Alyeska, and contractor representatives held a meeting to discuss the readiness to proceed from planning to execution of Strategic Reconfiguration. SOA-475 [JA 2318-2326]. At the meeting, the Carriers indicated there were significant and notable deficiencies for this stage in several areas, including development and documentation of risks and opportunities in the

estimates and forecasts, and development and documentation of overall program management. *Id.* at 1 [JA 2318]. At this meeting, Carrier employees criticized the scope and execution plan for Strategic Reconfiguration. *Id.* at 1-8 [JA 2318-2325].

F. Preliminary project reviews confirmed Strategic Reconfiguration was poorly conceptualized.

Alyeska commissioned two reports to review SNC Lavalin's work; the Larkspur Report and the Independent Project Analysis Inc. Report ("IPA Report"). Initial Decision PP 585, 608-613, SOA-136 at 74 [JA 1118-1119, 1124-1125, 2456]. The Larkspur Report noted SNC-Lavalin's costs estimates were inaccurate and too general. Initial Decision PP 608-609, SOA-222 at 9 [JA 1124-1125, 2506]. Larkspur had major concerns that Strategic Reconfiguration could be completed for \$252 million. SOA-222 at 13 [JA 2510]. The initial IPA Report gave Strategic Reconfiguration a "poor" rating. Order P 46 [JA 885]. Despite the Larkspur Report and IPA report warnings, the Carriers pursued early sanction of Strategic Reconfiguration. Initial Decision PP 142, 150, 431, 458, 630, 638, SOA-184 [JA 979, 981-982, 1070, 1079, 1129, 1131-1132, 4199-4200].

G. Post-sanction, the Carriers lose control of the Strategic Reconfiguration project and encounter severe cost overruns.

The Carriers initially approved \$252 million to complete Strategic Reconfiguration based on the 2003 SNC-Lavalin estimates. Initial Decision P 833, SOA-55 at 1 [JA 1197, 3171]. If the Carriers had re-evaluated Strategic

Reconfiguration at this point, the Carriers would have come to the obvious conclusion that the \$252 million project estimate was wrong. Initial Decision P 657, 680, 846 [JA 1139-1140, 1147, 1200-1201]. For instance, the \$252 million estimate—which relied on a contractor with no Alaska experience—underestimated the significant amount of brownfield work associated with a project like Strategic Reconfiguration. Order PP 9, 25 [JA 863, 873-874] [Resp. Br. at 47-49]. Had the Carriers taken the necessary time, they would have known the electric motors necessary to upgrade the pump stations were not proven technology. [Resp. Br. at 50]. The Carriers ignored the Larkspur and IPA reports which strongly noted the SNC-Lavalin estimates were based on generic assumptions about the project. SOA-184 [JA 4199-4200].

In July 2004—around the time Independent Project Analysis Inc. warned the Carriers not to increase the scope of Strategic Reconfiguration—SNC-Lavalin told the Carriers there was a question concerning whether it could meet the Carriers' original schedule and cost targets. Initial Decision P 844, SOA-199, ATC-258 at 3, 5 [JA 1200, 3186-3192, 3106, 3108, 4216, 4218]. Despite these developments, the Carriers broke ground on the project in August 2004. Initial Decision P 846 [JA 1200-1201]. By September 2004, Strategic Reconfiguration was estimated to cost \$314-345 million, leading the Carriers to question the project's viability,

especially under SNC-Lavalin's leadership. Initial Decision PP 814-815, 817, 869 [JA 1192, 1192-1193, 1206].

By March 2005, one Carrier called Strategic Reconfiguration an underperforming project suffering from problems like "scope creep," "design changes," "technology surprises," and "inadequate resources." SOA-341 at 4 [JA 3212]. Despite all these problems, the Carriers remained unwilling to stop Strategic Reconfiguration or alter its timelines. Initial Decision P 428, SOA-240 at 2 [JA 1068-1069, 3223].

Due to cost overruns, by the time of the FERC hearings, the Carriers had spent \$707.8 million on Strategic Reconfiguration (\$455.8 million over budget), excluding Pump Station 1.³ Initial Decision P 1110 [JA 1279].

H. FERC concludes Strategic Reconfiguration is imprudent.

In 2009, the Carriers began charging customers—shippers—for Strategic Reconfiguration. Order P 3 [JA 859]. After an extensive hearing, FERC concluded the Carriers could not charge shippers for Strategic Reconfiguration costs because the Carriers imprudently studied and sanctioned Strategic Reconfiguration. Order P 108 [JA 912]. Moreover, because the Carriers could not show significant de-

³ \$707.8 million (the project cost at the time of the hearing) minus \$252 million (the project estimate) equals \$455.8 million. Initial Decision P 833, 1322, SOA-55 [JA 1197, 1338, 3171-3176].

staffing or other operation and maintenance savings, the Carriers could not justify the costs based on benefits to ratepayers. Order PP 68-76 [JA 894-898].

The Carriers appeal FERC's decision to this Court.

SUMMARY OF ARGUMENT

Strategic Reconfiguration was a waste of hundreds of millions of dollars; it was unreasonable, and it was imprudent. Strategic Reconfiguration was not required for any engineering, safety, or environmental reason, and was undertaken to purportedly save money. However, the project was flawed in conception, improperly scoped and engineered, and based on deficient analyses of costs and benefits. It should never have gone forward. The Carriers should be prevented from transferring the costs of their mismanagement onto, among others, the citizens of Alaska. In this case, FERC correctly held Strategic Reconfiguration was imprudent. Moreover, FERC did not rely upon hindsight in its conclusion.

ARGUMENT

I. STANDARD OF REVIEW

The State adopts Respondent's statement of the Standard of Review.

[Resp. Br. at 13-14].

II. FERC'S RATE DETERMINATIONS WERE REASONABLE IN THIS CASE

A. FERC correctly held Strategic Reconfiguration was imprudent.

FERC held the Carriers should bear a majority of the Strategic Reconfiguration costs. The Court should affirm FERC's ruling.

1. The parties raised serious doubt that Strategic Reconfiguration was prudent, and the Carriers could not show Strategic Reconfiguration was prudent.⁴

The substantial evidence before FERC shows the Carriers imprudently sanctioned and rushed Strategic Reconfiguration. There is no dispute in this case that the legal standard governing prudence is *In re New England Power Co.*, 31 FERC ¶ 61,047 (1985), which states:

In performing our duty to determine the prudence of specific costs, the appropriate test to be used is whether they are costs which a reasonable utility management (or that of another jurisdictional entity) would have made, in good faith, under the same circumstances, and at the relevant point in time. *Id.* at 61,084.

⁴ The burden of proof to demonstrate that a proposed oil pipeline rate is just and reasonable is on the Carrier. *Anaheim, Riverside, Banning, Colton, & Azusa, Cal. v. FERC*, 669 F.2d 799, 809 (D.C. Cir. 1981). As a procedural matter, FERC assumes prudence and requires parties such as Anadarko, Tesoro, FERC Staff, and the State to initially raise "serious doubts" as to prudence. *Id.* To raise serious doubts, a protestant needs to provide evidence that "constitutes more than a bare allegation of imprudence." *In Re Minn. Power & Light Co.*, 11 FERC ¶ 61,312 at 61,645 (1980). Given the facts of this case, Anadarko, Tesoro, FERC Staff, and the State met the "serious doubts" standard and the Carriers could not ultimately show Strategic Reconfiguration was prudent.

Under this standard, management discretion does not mean that extravagant and unnecessary costs can be imposed on the ratepayers, no matter how convinced management may have been that those costs were necessary in its own interest. *Id.* at 61,083.

Here, the Carriers studied alternatives to Strategic Reconfiguration from 1994 to 2000. Initial Decision PP 152-197, 231, 252, 311, SOA 729-739, SOA 542 at 41-48, ATC-110 at 7-8, ATC-135 at 11 [JA 982-993, 1002, 1010, 1026, 1467-2095, 3796-3803, 2192-2193, 2202]. Contrary to industry standards, all of this prudent analysis was set aside when high-level Carrier executives overruled these careful studies and wasted hundreds of millions of dollars. Initial Decision PP 348, 352, SOA-143 at 16, SOA-542 at 10:9-13:1 [JA 1041, 1042, 2188, 3787]. The Carrier's "clean sheet" Strategic Reconfiguration approach pretended the pump stations—which were working at 99.6% efficiency—did not exist and advocated a complete replacement with new electrified facilities. *Id.* See also AT-165 at 4 [JA 2198]. Prudent pipeline managers consider alternative actions and evaluate their costs and benefits. Initial Decision PP 117, 130 [JA 968, 973-974]. That did not happen in this case. Instead, the record is replete with admissions of imprudence. Order PP 8-88. See also SOA-65 at 3, SOA-174 at 10, SOA-11 at 26, SOA- 292 at 2, ATC-321 [JA 862-905, 3279, 3388, 3347, 4204, 3316-3321].

2. FERC did not rely on hindsight in its findings.

The record shows that immediately after sanction, the Carriers experienced serious and costly problems with Strategic Reconfiguration. Those problems were either known or foreseeable prior to sanction. Strategic Reconfiguration's problems included an underestimation of brownfield work, a poor understanding of the motors necessary to electrify the pumps, ill-suited project managers, and poor conceptual engineering. Costs spun out of control. On appeal, the Carriers incorrectly ask this Court to excuse their conduct, claiming these problems were foreseeable only in hindsight.

Established hindsight precedent does not excuse the Carriers' conduct in this case. In deciding whether a management decision like proceeding with Strategic Reconfiguration is prudent, FERC cannot replace its own judgment for that of an operator, or second-guess an operator based on later occurrences. *Ind. & Mich. Mun. Distributions Ass'n v. Ind. Mich. Power Co.*, 62 FERC ¶ 61,189, at 62,238 (1993); *City of New Orleans v. Entergy Corp.*, 61 FERC ¶ 63,007 at 65,016 (1992). Rather, FERC asks whether the manager failed to consider the costs and benefits of an action prior to taking the action, looking at what the manager knew or should have known. *In re New England Power Co.*, 31 FERC ¶ 61,047 at 61,084 (1985). The Carriers knew or should have known their decision to proceed with the large-

scale Strategic Reconfiguration project was problematic and rushed. This did not require hindsight.

a. The Carriers knew or should have known Strategic Reconfiguration would require significant brownfield work.

The record shows the Carriers *knew*—from the Bailey Report—that Strategic Reconfiguration would require significant brownfield work. Initial Decision P 904 [JA 1216]. At the hearing, the Carrier’s own witness testified that “excitement” about Strategic Reconfiguration led to an underestimation of brownfield work. Initial Decision P 454 [JA 1078]. The Carriers imprudently relied on poor preliminary engineering from a company with no Alaska experience in determining there would be little to no brownfield work. Initial Decision PP 656, 658, 744, 1252 [JA 1139, 1140, 1169-1170, 1319-1320]. The level of brownfield work necessary for Strategic Reconfiguration was not discovered in hindsight, it was already known before the project began.

b. The Carriers knew or should have known the electric pump motors were not proven technology, particularly in remote areas without an electric power grid.

The Carriers—in their rush to sanction Strategic Reconfiguration—failed to verify that the large motors necessary to upgrade the pumps were “proven technology.” Order P 26, SOA-339 at 1 [JA 874, 3203] [Resp. Br. at 50]. The

Carriers should have performed better advance work on the motors during earlier engineering phases to avoid this problem. This did not require hindsight.

c. The Carriers knew or should have known the project manager was poorly suited for Strategic Reconfiguration.

Contrary to the Carriers' argument, FERC did not rely on hindsight in determining the Carriers imprudently hired the project manager. [Pet. Br. 46-47]. The Carriers knowingly hired a project manager with minimal pipeline project experience; the largest pipeline project overseen by the project manager was a two-mile long, \$2 million project. Initial Decision P 502, Order P 23 [JA 1095-1096, 872-873]. The Carriers compounded this error by failing to integrate the project manager into the hierarchy at Alyeska, whose personnel understood the pump stations. Initial Decision P 1092 [JA 1274]. The Carriers recognized they made a mistake in hiring an inexperienced project manager midway through Strategic Reconfiguration. [Pet. Br. 47]. But, that is not hindsight; a prudent manager would know not to hire such an inexperienced manager and then insulate that manager from Alyeska employees who had actual experience running TAPS.

d. The Carriers knew or should have known SNC-Lavalin was an imprudent choice to lead the Strategic Reconfiguration project.

Despite the Carriers' argument to the contrary, SNC-Lavalin was a poor

contractor choice from the start. [Pet. Br. 34-36]. The Carriers failed to account for SNC-Lavalin's lack of Alaska experience. Initial Decision P 660, SOA-217, SOA-1 at 153:1-15 [JA 1141, 4201-4202, 3504]. In fact, the Carriers imprudently ignored their own conclusions that SNC-Lavalin was not a mature bidder. Initial Decision P 662 [JA 1141]. The Carriers knew SNC-Lavalin had a poor understanding of the scope of work from the start. Initial Decision P 660, SOA-217 [JA 1141, 4201-4202]. The Carriers either knew or looked away when its lead contractor failed to subcontract with local contractors. Initial Decision P 523 [JA 1102]. SNC-Lavalin ignored the Carriers' in-house experts at Alyeska. Initial Decision P 635, SOA-284 at 2-3 [JA 1130-1131, 2314-2315]. The Carriers continued to employ SNC-Lavalin even after the Carriers knew or should have known SNC-Lavalin failed to account for Alaska fire and gas regulations in its designs. Initial Decision P 649, 659 [JA 1135-1136, 1140]. The record shows the Carriers knew or should have known that SNC-Lavalin's poor understanding of the project would lead to cost overruns.

e. The Larkspur and IPA reports show the Carriers knew or should have known Strategic Reconfiguration was an imprudent project.

The Larkspur Report and the IPA Report show the Carriers imprudently ignored warnings about Strategic Reconfiguration. [Pet. Br. 36-38] Both reports identified significant problems with engineering cost estimates. Initial Decision PP

585, 608-613 [JA 1118-1119, 1124-1125]. The Larkspur Report specifically warned that the project's scope was not clearly defined. Initial Decision PP 750, 771, SOA-222 at 9 [JA 1172-1173, 1180, 2506]. Larkspur tried to meet with the Carriers to discuss these problems, but no such meeting ever took place. *Id.* In July 2004—around the time Independent Project Analysis Inc. warned the Carriers not to increase the scope of Strategic Reconfiguration—the Carriers allowed the project's scope to spin out of control. Initial Decision P 844, ATC-258 at 3, 5, SOA-199, SOA-341 [JA 1200, 3106, 3108, 3186-3192, 3209-3221]. Despite all these problems, the Carriers remained unwilling to stop Strategic Reconfiguration or alter its timelines. Initial Decision P 428, SOA-240 at 2 [JA 1068-1069, 3223]. FERC's reliance on the Larkspur Report and the IPA Report is not evidence of hindsight analysis. The reports are evidence of imprudence because the Carriers ignored them.

B. The Carriers cannot recover 2006 ad valorem taxes from 2010 ratepayers.

The State adopts Respondent's facts and arguments sections regarding the ad valorem tax issue. [Resp. Br. at 4-6, 15-24]. Also, the filed rate doctrine and the intergenerational equity principle both preclude the Carriers from ad valorem tax recovery in this instance. Initial Decision PP 1630, 1653 [JA 1447-1448, 1456].

C. Issues related to Pump Station 1 are not ripe.

The Carriers prematurely raise due process claims regarding Pump Station 1 costs. [Pet. Br. 56-59]. As fully explained in Respondent's brief, the Order specifically declined to disallow any Strategic Reconfiguration costs for Pump Station 1. Accordingly, for the reasons stated in Respondents brief, the Carriers' Pump Station 1 claim is premature.

CONCLUSION

For the forgoing reasons, the State asks this Court to affirm the FERC's final decisions in this case.

Respectfully Submitted

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September 30, 2016

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C) and Circuit Rule 32(a), I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 3,906 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in Times New Roman 14-point font using Microsoft Word 2010.

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CERTIFICATE OF SERVICE

In accordance with Fed. R. App. P. 25(d), and the Court's Administrative Order Regarding Electronic Case Filing, I hereby certify that on this 30th day of September, 2016, the foregoing was served upon the below listed counsels of record via the Court's CM/ECF system or via U.S. Mail.

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