

154 FERC ¶ 61,182
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Maritimes & Northeast Pipeline, L.L.C.

Docket No. RP15-1026-000

ORDER GRANTING INTERLOCUTORY APPEAL, DENYING INTERVENTION,
AND APPROVING SETTLEMENT

(Issued March 9, 2016)

1. On February 17, 2016, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) and Commission Trial Staff (Trial Staff) each filed requests for interlocutory appeal of the decision by the presiding administrative law judge (Presiding Judge) on January 19, 2016 to grant Liberty Affiliates'¹ motion for late intervention in this proceeding,² and his decision on February 10, 2016, denying their motions for reconsideration.³ For the reasons discussed below, the Commission grants the interlocutory appeal, and rejects Liberty Affiliates' motion for late intervention.

¹ Liberty Affiliates refers to Liberty Utilities (Pipeline & Transmission) Corporation (Liberty P&T) and Algonquin Tinker Generation Company (Algonquin Tinker). Two other affiliates of the Liberty Affiliates, Liberty Utilities (EnergyNorth Natural Gas) Corp. and Liberty Utilities (New England Natural Gas Company) Corp. (together, Liberty LDCs) timely intervened at the beginning of this proceeding, on June 10, 2015.

² *Maritimes & Northeast Pipeline, L.L.C.*, Order Granting Motion to Intervene, Docket No. RP15-1026-000 (Jan. 19, 2016) (unpublished order) (January 19 Order).

³ *Maritimes & Northeast Pipeline, L.L.C.*, Order Denying Motions for Reconsideration and Request for Interlocutory Appeal, Docket No. RP15-1026-000 (Feb. 10, 2016) (unpublished order) (February 10 Order).

2. On January 27, 2016, Maritimes submitted for filing a Stipulation and Agreement (Settlement) that would resolve all pending issues in the instant docket. On February 29, 2016, the Presiding Judge certified the Settlement as uncontested, regardless of the status of Liberty Affiliates' motion for late intervention. As discussed below, the Commission approves the Settlement, and directs Maritimes to file actual tariff records to replace the *pro forma* records filed as part of the Settlement.

Background

3. The Maritimes system currently receives natural gas at the Maine-Canada border and transports that gas to delivery points at interconnections with Algonquin Gas Transmission LLC (Algonquin) and Tennessee Gas Pipeline Co. (Tennessee) in Massachusetts. Maritimes and Algonquin are affiliates. On April 27, 2015, the Commission published a Notice of Intent to prepare an environmental assessment and request comments on the Atlantic Bridge Project proposed by Maritimes and Algonquin. That project would include modifications to the Algonquin and Maritimes systems which would permit Maritimes to receive natural gas at the southern end of its system and transport that gas north into Maine.

4. On May 29, 2015, Maritimes filed pursuant to section 4 of the Natural Gas Act (NGA) proposing a general rate increase, and seeking approval for a system-wide postage stamp fuel rate. The deadline for timely motions to intervene was June 10, 2015. On June 30, 2015, the Commission suspended the rates for five months and set the issues raised by Maritimes' filing for hearing.⁴ On October 27, 2015, Maritimes and Algonquin filed an application in Docket No. CP16-9-000 for a certificate under NGA section 7 to construct the Atlantic Bridge Project.

5. On December 10, 2015, Maritimes announced that the active parties in this rate case had "reached a settlement in principle that would address all issues." Based on that announcement the Chief Judge suspended the procedural schedule, and directed Maritimes to file a formal Offer of Settlement.⁵

6. On December 24, 2015, Liberty Affiliates filed a motion for leave to intervene out of time. They stated that both Liberty P&T and Algonquin Tinker are subsidiaries of Algonquin Power & Utilities Corp. They stated that Liberty P&T was formed to

⁴ *Maritimes & Northeast Pipeline, L.L.C.*, 151 FERC ¶ 61,272 (2015).

⁵ *Maritimes & Northeast Pipeline, L.L.C.*, Order of Chief Judge Suspending Procedural Schedule and Waiving Period for Answers, Docket No. RP15-1026-000 (Dec. 11, 2015) (unpublished order).

invest in energy transmission facilities primarily in the northeast United States, and Algonquin Tinker owns the Tinker electric transmission facility which is in New Brunswick, Canada and serves electricity load in northern Maine. Liberty Affiliates stated that “they have an interest in the outcome of this proceeding as energy investors and/or service providers in the New England states” and that their interest could not be represented by any other party in this proceeding. Liberty Affiliates stated that they “are aware that ... the active participants have reached a settlement in principle,” and thus they would accept the record and filings in the proceeding as it stood. Liberty Affiliates stated that they only sought the opportunity to observe and productively participate in the ongoing settlement proceedings.”⁶

7. On January 7, 2016, Maritimes filed in opposition to Liberty Affiliates’ late motion to intervene, claiming they had not met the standards for late intervention. Maritimes also argued that granting late intervention could disrupt the settlement process to the detriment of the parties who had worked to negotiate the settlement. On January 15, 2016, Maritimes reported that the other parties had exchanged a draft of the formal Stipulation and Agreement, which they planned to file by the end of the month.

8. On January 19, 2016, the Presiding Judge granted the motion to intervene. The Presiding Judge noted Maritimes’ argument that because “the active parties have already reached a settlement ... granting said motion at this late date would cause prejudice.”⁷ However, the Presiding Judge stated that “the claims of prejudice appear to be general in nature,” and ruled that granting intervention was “in the interest of justice.”⁸

9. On January 27, 2016, Maritimes filed the formal Settlement. As discussed below, the Settlement would reduce rates for all services to a level below those effective prior to Maritimes’ filing, and maintain those rates until at least November 1, 2019, with Maritimes obligated to make a new rate filing by July 1, 2020. The Settlement would reduce certain rates a second time, once Maritimes’ Atlantic Bridge Project enters service. The Settlement also restores Maritimes’ prior program of crediting half of mainline interruptible revenues above a threshold to all mainline firm and interruptible customers, and obligates Maritimes to create a small fund dedicated to funding new infrastructure in Maine.

⁶ Liberty Affiliates December 24, 2015 Motion to Intervene.

⁷ January 19 Order.

⁸ *Id.*

10. On January 28, 2016, Maritimes moved for a shortened answer period, noting that none of the parties who participated in the settlement discussions oppose the settlement. On January 29, 2016, Liberty Affiliates filed a “Motion to Compel Production of Previously Produced Discovery and Privileged Information, Extend Comment Period for Offer of Settlement, . . . or, in the Alternative Comments Opposing Offer of Settlement.” The Presiding Judge denied both Maritimes’ and Liberty Affiliates’ motions and ordered the parties to “confer personally,” to resolve their dispute informally.⁹

Motions for Reconsideration and Answer

11. On February 2, 2016, Maritimes and Commission Trial Staff each separately filed motions for reconsideration of the order granting Liberty Affiliates’ intervention, or in the alternative, requesting that the Presiding Judge permit Maritimes to seek interlocutory appeal of Liberty Affiliates’ intervention. Maritimes claimed that “[t]he January 19 Order incorrectly transfers the Liberty Affiliates’ burden to show good cause to Maritimes,” when the Presiding Judge discussed Maritimes’ concerns of prejudice.¹⁰ Maritimes argued that Liberty Affiliates offered only a vague explanation of how, as a project developer that invests in New England projects, it had a legitimate interest in the Maritimes docket. Maritimes also argued that Liberty Affiliates failed to explain why its interests were not adequately represented by pre-existing parties, especially as those parties include Liberty Affiliates’ affiliate, Liberty Utilities.¹¹ Maritimes noted that Liberty Affiliates are sophisticated entities who are fully aware of the Commission’s intervention rules¹² and argued that granting intervention after a settlement in principle is reached contravenes the Commission’s policy favoring settlements.¹³

12. Maritimes also argued that Liberty Affiliates’ behavior after being allowed to intervene has only confirmed Maritimes’ fears that allowing Liberty Affiliates to intervene would disrupt and delay the settlement process. Maritimes noted that Liberty Affiliates had already “caused a delay” by requesting that the participants consider the

⁹ *Maritimes & Northeast Pipeline, L.L.C.*, Order Denying Shortened and Extended Comment Period and Motion to Compel Discovery/Order Requiring Parties to Meet and Confer, Docket No. RP15-1026-000 (Jan. 29, 2016) (unpublished order).

¹⁰ Maritimes February 2, 2016 Appeal at 2.

¹¹ *Id.* at 7.

¹² *Id.* at 9.

¹³ *Id.* at 14.

addition of an entirely new provision to the Settlement that Liberty Affiliates knew would not be acceptable to the active parties because it benefits only the Liberty Affiliates' competitive interests.¹⁴ Maritimes also noted that Liberty Affiliates made discovery requests over a month after the procedural schedule had been suspended, and challenged an otherwise unopposed motion to shorten the comment period on the Settlement. Maritimes alleged that Liberty Affiliates has a competitive interest in foiling any possible settlement because lower rates on Maritimes' system would competitively damage the interests of competing pipelines in which Liberty Affiliates invests.¹⁵

13. Trial Staff supported Maritimes' position, reiterating the claim that Liberty Affiliates fail to show good cause why the time limitation should be waived.¹⁶ Trial Staff argued that the Commission "routinely denies late intervention when justification for being untimely is not adequate."¹⁷ Trial Staff argued further that Liberty Affiliates, in addition to not offering an explanation of their tardiness, also offered only a "vague and unsupported" explanation of their "stated interest in this proceeding."¹⁸ Trial Staff also claimed that Liberty Affiliates' recent behavior has caused "significant prejudice ..., including the delay for shippers in the negotiated rate reductions in the Settlement Agreement."¹⁹ Trial Staff also noted that the Commission has denied late interventions expressly on the grounds that those interventions appeared to be burdensome to settlement negotiations.²⁰ Several other timely-intervening parties filed motions supporting Maritimes' and Trial Staff's briefs.

¹⁴ *Id.*

¹⁵ *Id.* at 8-9.

¹⁶ Commission Trial Staff February 2, 2016 Appeal at 6 (citing 18 C.F.R. § 385.214(b)(3) (2015)).

¹⁷ *Id.* at 4 (citing *Covelo Indian Community v. FERC*, 895 F.2d 581, 586-87 (9th Cir. 1990); *So. California Edison Co.*, 100 FERC ¶ 61,327, at P 7 (2002); *Niagara Mohawk Power Corp.*, 100 FERC ¶ 61,247, at P 18 (2002); *Summit Hydropower*, 58 FERC ¶ 61,360, at 62,199-200 (1992)).

¹⁸ *Id.* at 7.

¹⁹ *Id.* at 1-2.

²⁰ *Id.* at 6 & n.18 (citing *Williams Pipe Line Co.*, 30 FERC ¶ 61,262, at 61,546 (1985); *Pacific Gas and Electric Co.*, 51 FERC ¶ 61,371, at 62,264 (1990) (reaffirming its decision in *Williams* and stating that the intervention "would disrupt the proceeding

(continued ...)

14. On February 8, 2016, Liberty Affiliates filed an answer opposing the motions for reconsideration. Liberty Affiliates argued that it is neither unjustifiably late nor disruptive but is aggressively exercising its rights in light of alleged wrongdoing by Maritimes in an unrelated proceeding before the Maine Public Utilities Commission (Maine PUC). According to Liberty Affiliates, on December 11, 2015, the Maine PUC found that the Central Maine Power Company had unlawfully used confidential information that it obtained from third party pipelines as it was negotiating a precedent agreement with Maritimes. Liberty Affiliates claimed that this order “raised concerns for the Liberty Affiliates that Maritimes and Algonquin might be coordinating similarly in this proceeding, and attempting in settlement to restrict access to existing capacity.”²¹ Liberty Affiliates explained that they made no mention of this reason in its motion to intervene “so as not to cast aspersions on Maritimes or unduly color this proceeding.”²² Liberty Affiliates countered any attempt to “dismiss such concerns as speculative,” by noting that the Settlement would reduce some rates “effective upon the in-service date of Maritimes’[] portion of the Maritimes-Algonquin joint Atlantic Bridge Project.”²³ Liberty Affiliates allege that Maritimes’ reason for including this settlement term is “to restrict access by non-affiliates to existing pipeline facilities.”²⁴

15. Liberty Affiliates also argued that they have an interest in the proceeding that no other party can adequately represent. They claimed that “[a]s a preliminary matter, it was not clear to the Liberty Affiliates that the Liberty LDCs were individual parties to this proceeding, as there are no representatives for either of the two companies listed on the service list in this proceeding.”²⁵ Furthermore, Liberty Affiliates argued that acting

and burden parties who have resolved their differences after long and undoubtedly difficult negotiation.”); *Black Marlin Pipeline Co.*, 67 FERC ¶ 61,205, at 61,639 (*Black Marlin*) (1994) (under same rationale, Commission order reversing grant of late intervention after settlement in principle was reached, but before settlement was filed)).

²¹ Liberty Affiliates February 8, 2016 Answer at 12.

²² *Id.*

²³ *Id.* at 13.

²⁴ *Id.*

²⁵ *Id.*

through their affiliates would “prohibit[them] from accessing information,” in the docket that is considered confidential.²⁶

16. With regard to their tactics since intervening, Liberty Affiliates argued that “Maritimes’[] obstructionist tactics,” are to blame.²⁷ Liberty Affiliates claimed that if Maritimes had not objected to Liberty Affiliates’ intervention and had promptly handed over the confidential information that Liberty Affiliates requested, then there would have been no delays, and in any event, the delays so far have been minimal.

The Presiding Judge’s Order

17. On February 10, 2016, the Presiding Judge denied the motions for reconsideration and the request for interlocutory appeal under Rule 715(a) (thereby setting up the parties’ rights to request interlocutory appeal under Rule 715(c)).²⁸ The Presiding Judge noted that in the “worst case scenario” where Liberty Affiliates contested the filing, “the Commission would have a sufficient record ... to decide.”²⁹ The Presiding Judge also found that Liberty Affiliates have “acted in good faith since becoming a party,” and he repeated his concern that Maritimes’ original opposition to Liberty Affiliates’ intervention was “very general in nature.”³⁰ The Presiding Judge also argued that denying intervention would contradict the Commission’s policy in favor of transparency because it would “deprive Liberty Affiliates the opportunity to submit presumably meaningful comments to the Commission.”³¹ Finally, ruling on the procedural question of whether interlocutory appeal was appropriate, the Presiding Judge ruled that “no extraordinary circumstances exist.”³²

²⁶ *Id.* at 14.

²⁷ *Id.* at 10.

²⁸ *See* 18 C.F.R. § 385.715(a), (c).

²⁹ February 10 Order at n.1.

³⁰ *Id.*

³¹ *Id.* P 2.

³² *Id.* P 3.

Interlocutory Appeals and Answer

18. In their separate February 17, 2016 motions for interlocutory appeal, Maritimes and Trial Staff largely repeat the above arguments and claim that the events of the past week further demonstrate Liberty Affiliates' intent to delay the Settlement. They claim that Liberty Affiliates have cited no cases where the Commission granted intervention after a settlement in principle had been reached and reiterate the claim that allowing interventions at this late stage would undermine the Commission's policy favoring settlements because doing so devalues the efforts of timely intervenors to develop settlements.³³

19. Maritimes and Trial Staff both challenge Liberty Affiliates' claim that a Maine PUC proceeding impelled them to intervene, noting Liberty Affiliates only made this claim in its answer and not in their original motion to intervene, and asserting that Liberty Affiliates' claim fails on multiple grounds. First, they note, Liberty Affiliates did not intervene in the referenced Maine PUC proceeding, and the Maine PUC, which has been an active participant in the settlement discussions in this proceeding has not suggested that the Maine PUC proceeding to which the Liberty Affiliates refer has any relevance to this proceeding. Furthermore, Trial Staff argues, "[t]he Atlantic Bridge Project is no secret," and Liberty Affiliates should have known about Maritimes' involvement in the project for over a year.³⁴

20. Maritimes and Trial Staff also note that, since filing their original motions, numerous settling parties filed motions or made comments supporting their position, and that the settling parties have also been unanimous in rejecting Liberty Affiliates' proposals to amend the Settlement. Thus, they argue, Liberty Affiliates' purported interest is indeed adequately represented by existing parties, and the existing parties have, of their own accord, found Liberty Affiliates' reasoning not compelling.³⁵ Indeed, Maritimes argues that the "scurrilous allegations" of Liberty Affiliates have, in and of themselves, disrupted the proceedings.³⁶

³³ Trial Staff February 17, 2016 Interlocutory Appeal at 7-8; Maritimes February 17, 2016 Interlocutory Appeal at 12-13 (citing, *e.g.*, *Transok, L.L.C.*, 89 FERC ¶ 61,055, at 61,186-87 (1999) (*Transok*); *Black Marlin*, 67 FERC at 61,637).

³⁴ Trial Staff February 17, 2016 Interlocutory Appeal at 12.

³⁵ *Id.* at 13; Maritimes February 17, 2016 Interlocutory Appeal at 23.

³⁶ Maritimes February 17, 2016 Interlocutory Appeal at n.61.

21. Maritimes notes that, while the rules of intervention do allow a pipeline's competitors to intervene, Liberty Affiliates went out of their way in oral arguments to state that they are not a competitor of Maritimes.³⁷

22. On February 19, 2016, Liberty Affiliates filed an answer, disputing and contesting the motions for interlocutory appeal. Liberty Affiliates argue that Maritimes is taking an overly narrow view of what constitutes a valid interest in a Commission proceeding. They reiterate their claim that they have an interest in this proceeding as investors in Tennessee's Northeast Energy Direct Project. They state that project would compete with Maritimes' affiliate Algonquin, but benefit Maritimes services by introducing substantial additional supply to the Maritimes system. Liberty Affiliates state that they are concerned that Maritimes and Algonquin are coordinating their actions in order to tie firm primary path back haul service on the Maritimes system to taking service on Algonquin and/or their Atlantic Bridge Project. They also assert that Maritimes is apparently concealing existing or proposed back haul capacity on its system and that Maritimes may deny or delay open access firm back haul transportation to Algonquin's competitors. They argue that no present party in this proceeding can be expected to adequately represent their concern. Liberty Affiliates argue that they have not intentionally delayed or disrupted settlement of this proceeding, but rather have asserted their rights in the face of Maritimes' obstruction. Finally, Liberty Affiliates argue that their participation is in the public interest, as they are seeking to ensure that Maritimes is complying with the Commission's own open access requirements.

23. The Commission's Rules of Practice and Procedure do not provide for answers to motions for interlocutory appeal unless otherwise ordered by the decisional authority.³⁸ In this instance, the Commission finds good cause to admit Liberty Affiliates' answers because they will not delay the proceeding, they assisted the Commission in understanding the issues raised, and they will ensure a complete record. Therefore, for good cause shown, Liberty Affiliates' answers are accepted.

Settlement

24. On January 27, 2016, Maritimes filed the formal Settlement, which would resolve all outstanding issues in this proceeding.

³⁷ *Id.* at 22 & n.57 (citing February 9, 2016 Tr. 71:12-20 (Warren, attorney for Liberty Affiliates)).

³⁸ 18 C.F.R. § 385.213(a)(2) (2015).

25. Section 1.1 provides for the Settlement to take effect on the first day of the first calendar month after the order approving the Settlement without modification is no longer subject to appeal. Section 1.1 also refunds the difference between the suspension rates currently in effect, and the rates effective prior to Maritimes' filing. Section 1.2 describes the rates; the Settlement would reduce rates for all services to a level below those effective prior to Maritimes' filing. Section 1.2 also establishes a mechanism by which, once the Atlantic Bridge Project enters service, the maximum recourse reservation charge under Rate Schedule MN365 shall be reduced.

26. Section 1.3 establishes a system-wide fuel tracker mechanism, to be updated and trued-up annually. Section 1.4 and the accompanying schedule reflect the depreciation and amortization rates. Section 1.5 restores Maritimes' prior program of crediting half of mainline interruptible revenues above a threshold to all mainline firm and interruptible customers. Section 1.6 obligates Maritimes to create a small fund dedicated to funding new infrastructure in Maine. Section 1.7 establishes the moratorium period reflecting that the Settlement rates are to remain in effect until at least November 1, 2019, and obligating Maritimes to make a new rate filing by July 1, 2020.

27. Articles II and III of the Settlement contain miscellaneous provisions on the legal status of the Settlement. Section 2.3 obligates Maritimes to file actual tariff records within 20 days of the Settlement's effective date, to replace and implement the *pro forma* tariff records included in the Settlement.

28. Article IV describes the effects of approving the Settlement. Article 4.4 states:

No modification of the terms and provisions of this Settlement shall be made except by the execution of a written agreement by all of the parties to this Settlement, as approved by the Commission. The applicable standard of review for any future modification of this Settlement is the "just and reasonable" standard.

29. On February 16, 2016, comments on the Settlement were due, as per the Presiding Judge's January 29 Order. Every party that filed comments supported the Settlement except for Liberty Affiliates. In those comments, Liberty Affiliates state that Liberty P&T is an investor in Tennessee's Northeast Energy Direct project. They state that, when completed, the Northeast Energy Direct Project will interconnect with the southern end of Maritimes' system, in the same manner as the Algonquin Atlantic Bridge Project. They state that they are concerned that Maritimes' actions in this proceeding, together with Algonquin's and Maritimes' certificate proceeding for the Atlantic Bridge Project, will give Maritimes the ability to favor gas delivered into its system from its affiliate Algonquin over gas delivered into its system from Tennessee. For example, they express concern that Maritimes might take the position that access to firm south-to-north backhaul service on its system is dependent on receiving gas from Algonquin, require

shippers to pay incremental charges to Algonquin even if they are not shipping on Algonquin, or deny access from Tennessee based on inaccurate claims of pressure limitations. The Liberty Affiliates state that these concerns could be addressed by requiring Maritimes to add a separate, open access firm backhaul rate schedule to its tariff.

30. On February 26, 2016, numerous parties filed reply comments regarding the Settlement. Most notably, Trial Staff argued that the Presiding Judge should certify the Settlement as uncontested without waiting for the Commission's ruling on interlocutory appeal. Trial Staff argued that Liberty Affiliates' pleadings do not rise to the level of contesting the Settlement, on two separate grounds. First, Trial Staff argue that Liberty Affiliates have stated on the record that they do not contest the Settlement or the material facts underlying the Settlement, and have rather couched their filings as requests or concerns. Trial Staff argues that in such a situation, Commission practice is to treat the settlement as uncontested.³⁹ Second, Trial Staff argue that, substantively, Liberty Affiliates' concerns are tangential to, or completely outside the scope of, the existing proceeding. According to Trial Staff, Liberty Affiliates' counterproposal is a request to add a tariff provision for a backhaul service that does not exist on Maritimes' system, and thus is speculative.⁴⁰ Trial Staff concludes that because Liberty Affiliates' concerns do not lie with the Settlement itself, those concerns also should not prevent certification.

31. On February 29, 2016, the Presiding Judge certified the Settlement as uncontested. The Presiding Judge ruled that, regardless of Liberty Affiliates' party status, their comments were not "contesting in nature, because it identifies only a potential future concern... which even according to Liberty Affiliates, has not come into being, and which are outside the scope of the hearing issues."⁴¹ In the alternative, the Presiding Judge ruled that "grounds exist to certify the Settlement" as contested, if the Commission were to overturn the finding that the Settlement is uncontested.⁴²

³⁹ Trial Staff February 26, 2016 Reply Comments Supporting Settlement at 18 (citing *Northwest Pipeline Corp.*, 29 FERC ¶ 63,020, at 65,044 (1984)).

⁴⁰ *Id.* at 19-21.

⁴¹ *Maritimes & Northeast Pipeline, L.L.C.*, 154 FERC ¶ 63,016, at P 25 (2016).

⁴² *Id.* P 27.

Discussion

Interlocutory Appeal

32. We grant Maritimes' and Trial Staff's interlocutory appeals and deny intervention to Liberty Affiliates. In particular, we reaffirm the holding in *Black Marlin* that, after a settlement in principle has been reached and even though a formal settlement has not yet been filed, the Commission applies the strictest possible scrutiny to any requests for late intervention.⁴³

33. In ruling on a motion to intervene out of time, the Commission applies the criteria set forth in its Rule 214(d),⁴⁴ and considers, among other things, whether the movant had good cause for failing to file the motion within the time prescribed, whether any disruption to the proceeding might result from permitting the intervention, and whether any prejudice to or additional burdens upon the existing parties might result from permitting the intervention. Late intervention at the early stages of a proceeding generally does not disrupt the proceeding or prejudice the interests of any party. Therefore, the Commission is more liberal in granting late intervention at the early stages of a proceeding but is more restrictive as the proceeding nears its end.⁴⁵

34. In *Black Marlin*, the Commission granted an interlocutory appeal in order to overturn a grant of late intervention during the period in between the announcement of a settlement in principle and the formal submission of the settlement for certification.⁴⁶ The Commission ruled that parties are expected to intervene "as early as possible, whether or not they had yet decided the extent of their participation," rather than wait until they can better articulate their interest.⁴⁷ The Commission also ruled that "the lack of representation by other" parties who could stand in for the late intervenors was not "alone, sufficient reason to allow" a late intervention: the late intervenor's "interests were the same in February, and in September, as they are now—and [the late intervenor]

⁴³ *Black Marlin*, 67 FERC at 61,639.

⁴⁴ 18 C.F.R. § 385.214(d) (2015).

⁴⁵ *Stingray Pipeline Co.*, 66 FERC ¶ 61,202, at 61,461 (1994).

⁴⁶ *Black Marlin*, 67 FERC ¶ at 61,637.

⁴⁷ *Id.*

simply chose not to intervene then.”⁴⁸ The instant case presents the same circumstances, and warrants the same result.

35. Liberty Affiliates have not shown why they could not have intervened earlier in this proceeding, well before the parties reached a settlement in principle in December of last year. Liberty Affiliates emphasize that their interest in this proceeding is as investors in Tennessee’s Northeast Energy Direct Project, which they state is in competition with Algonquin and the Algonquin-Maritimes Atlantic Bridge Project. However, they have provided no reason why they could not have been aware of any potential impact of this rate case on their interests in June 2015 when timely interventions were due. Indeed, the Commission published a Notice of Intent to prepare an environmental assessment and request comments on the Algonquin-Maritimes Atlantic Bridge Project on April 27, 2015, over a month before Maritimes filed this rate case. Thus, the fact Algonquin and Maritimes were engaged in a project that might compete with Tennessee’s Northeast Direct Energy Project to provide north-bound natural gas supplies to the Maritimes system should have been well known to Liberty Affiliates in sufficient time for Liberty Affiliates to file a timely motion to intervene in this or that proceeding.

36. In its answer to the motion for reconsideration, Liberty Affiliates claim that a mid-December 2015 order in a Maine PUC proceeding aroused Liberty Affiliates’ suspicion that Maritimes may have an incentive to give undue preference to its own affiliates, impelling Liberty Affiliates to intervene here. However, Liberty Affiliates do not explain why they could not have intervened here at the Commission when this proceeding began, rather than waiting for another entity to raise concerns about Maritimes’ behavior. “Interested parties are not entitled to hold back awaiting the outcome of the proceeding, or to intervene only when events take a turn not to their liking.”⁴⁹ Indeed, we note that the Maine PUC and several companies with interests before the Maine PUC intervened in this Commission proceeding at its beginning, putting them in position to discuss this Maine PUC proceeding, to the extent they found it at all relevant, in their settlement negotiations. Further, the concerns raised by Liberty Affiliates with respect to affiliate preferences are speculative at this stage, and are more appropriately addressed in the respective certificate proceedings.

37. Further, Liberty Affiliates have failed to substantiate their claim that late intervention will not disrupt the proceeding or place additional burdens on the existing parties. Because Liberty Affiliates waited until after settlement negotiations had taken place and an agreement had been reached before they filed to intervene, their

⁴⁸ *Id.* at 61,639.

⁴⁹ *Summit Hydropower*, 58 FERC at 62,199-200 (1992).

participation at this final stage of the proceeding would seriously disrupt the proceeding, place unwarranted burdens on the active parties, and prejudice the interests of the settling parties. Each day of delay in this proceeding prevents the settling parties from taking advantage of the substantial and tangible benefits provided by the Settlement. As Trial Staff notes, the Settlement provides for a prospective reduction in Maritimes' rates below the level in effect before Maritimes filed this NGA section 4 rate case. Maritimes' shippers will not receive the benefit of that rate reduction until after final approval of the Settlement.

38. To allow Liberty Affiliates' late intervention would also undermine the Commission's policy of encouraging settlements as an effective means of resolving cases. Parties will be reluctant to invest the time and resources into the settlement process if the settlement they negotiate can later be contested by a late intervenor who belatedly decides that, after failing to participate in the proceeding up to that point, it opposes the result reached in the settlement. By failing to intervene in a timely fashion, Liberty Affiliates assumed the risk that the parties would settle the case in a manner not to their liking.⁵⁰

39. Finally, with regard to the Presiding Judge's concerns about transparency, as noted valid questions concerning the potential for Maritimes to grant undue preferences to shippers taking service on Algonquin as part of the Atlantic Bridge Project are more appropriately addressed in that proceeding. In addition, if Liberty Affiliates believes that Maritimes is violating the Commission's open access transportation regulations or its tariff by failing to provide notice of available primary firm backhaul capacity or in any other manner, Liberty Affiliates may file a complaint pursuant to section 385.206 of the Commission's regulations. Accordingly, we grant Maritimes' and Trial Staff's interlocutory appeals and deny intervention to Liberty Affiliates.

Settlement

40. The Commission finds that the Settlement appears to be fair and reasonable and in the public interest, and accordingly the Commission approves the Settlement. The Settlement resolves system-wide rate issues and provides the parties with regulatory certainty for the next several years. The Commission's approval of this Settlement does

⁵⁰ *Stingray Pipeline Co.*, 66 FERC at 61,462 (1994).

not constitute approval of, or precedent regarding, any principle or issue in this proceeding.⁵¹

41. In accordance with Section 2.3 of the Settlement, Maritimes must file actual tariff records in this docket within 20 days of the Settlement's effective date, in order to replace and implement the *pro forma* tariff records included in the Settlement.

The Commission orders:

(A) Maritimes' and Trial Staff's interlocutory appeals are granted, as discussed in the body of this order.

(B) The Commission approves the Settlement as fair and reasonable and in the public interest.

(C) As per the terms of the Settlement, Maritimes must file actual tariff records within 20 days of the Settlement's effective date, replacing and implementing the *pro forma* tariff records included in the Settlement.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵¹ As we are rejecting Liberty Affiliates' intervention, we are approving the Settlement as uncontested. Given that the Presiding Judge expressly certified the Settlement as uncontested regardless of the status of Liberty Affiliates' motion for late intervention, we need not remand the proceedings to the Presiding Judge.