

Judicial Council Coordinated Proceeding (JCCP) 4221, 4224,4226, and 4228  
Natural Gas Anti-Trust Cases I, II, III, & IV

### **MOTION FOR COORDINATION AS ADD-ON-CASES**

#### **TENTATIVE RULING:**

The Court issues the following tentative ruling on the submitted requests for coordination as add-on cases in the Judicial Council Coordinated Proceedings (JCCP) Nos. 4221, 4224, 4226, and 4228, the Natural Gas Anti-Trust Cases I, II, III & IV as follows:

The Court would first like to apprise the parties that it has been assigned to act as the Motion Coordination Judge under Code of Civil Procedure section 404.3 and Rule 1540 of the California Rules of Court respecting the Natural Gas Anti-Trust Cases V, pursuant to a petition filed with the Judicial Council in December 2004. The parties have informed the Court that the petitioner attempted to withdraw the petition so that it could instead file the instant request for coordination of add on cases. However, in light of the above-referenced assignment, petitioner's attempt to withdraw the petition was ineffective. In addition, although the Court has yet to receive the papers in support of the petition, there is a likelihood that many of the cases to be coordinated via the petition are included in the instant add-on motion. But on this point, the Court is unclear.

Therefore, to avoid any confusing overlaps, the Court is willing to entertain a motion by the petitioner(s) to withdraw the petition. If petitioners so move, the Court is inclined to grant the motion and dismiss the petition without prejudice, as withdrawn.

With respect to the add-on motion, the Court grants the motion and also allows the various joinders to the motion. In this regard, the Court finds the arguments of defendants unpersuasive. First, the argument that the Court should "not second-guess the Judicial Council's determination of the appropriate coordination procedure" lost its thunder due to its recent assignment as the Motion Coordination Judge.

Second, while the Court understands that the factual predicate of the add-on cases (the price index cases) is somewhat different from the factual predicate of the cases presently coordinated (the gas pipeline cases), defense counsel in the pipeline cases has apprised the Court that he plans to raise causation defenses that directly implicate the actions or alleged actions of the defendants in the price index cases, specifically that the alleged losses incurred by the pipeline plaintiffs resulted from the acts of the price- index defendants, and not from the actions of the pipeline defendants. It is therefore likely that the price index defendants will raise similar defenses, claiming that the alleged losses were caused by the actions of the pipeline defendants. Therefore, on the critical issue of causation, there are material issues of fact and law that predominate both sets of cases. The Court further notes that these common issues were not part of the record when plaintiffs first attempted to coordinate the price index cases with the pipeline cases.

The Court emphasizes that coordination does not mean consolidation, but simply that the same Court will manage the litigation and preside over the trial of the cases. Further, there is no doubt that the Court's experience in managing and presiding over the highly complex pipeline cases will help it assimilate and understand the issues in the price index cases, thereby preserving valuable judicial resources. Lastly and just as important, coordination of the price index cases with the pipeline cases will eliminate duplicative rulings and greatly reduce the probability of inconsistent judgments.

For these reasons, and the additional reasons set forth in plaintiff County of Alameda's Memorandum of Points and Authorities in support of request for coordination of add-on cases, the Court grants the request and the requests of the parties joining in the motion.