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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

In re WESTERN STATES WHOLESALE
NATURAL GAS ANTITRUST
LITIGATION

ARANDELL CORP. et al.,

Plaintiffs,

vs.

XCEL ENERGY INC. et al.,

Defendants.

NEWPAGE WISCONSIN SYSTEM INC.,

Plaintiff,

vs.

CMS ENERGY RESOURCE
MANAGEMENT CO. et al.,

Defendants.

2:03-cv-01431-RCJ-PAL
MDL No. 1566
ORDER

2:07-cv-01019-RCJ-PAL

2:09-cv-00915-RCJ-PAL

1 These consolidated cases arise out of the energy crisis of 2000–2002. Plaintiffs (retail
2 buyers of natural gas) allege that Defendants (natural gas traders) manipulated the price of
3 natural gas by reporting false information to price indices published by trade publications and by
4 engaging in “wash sales.” In 2003, the Judicial Panel on Multidistrict Litigation (“JPML”)
5 transferred seven class action cases from various districts in California to this District under 28
6 U.S.C. § 1407 as Multidistrict Litigation (“MDL”) Case No. 1566, assigning Judge Pro to
7 preside. Since then, the JPML has transferred in several more actions from various districts
8 throughout the United States. Between 2003 and 2015, Judge Pro ruled on many motions to
9 remand, to dismiss, and for summary judgment. He also approved several class settlements.
10 Several parties settled on their own. One or more of the cases have been to the Court of Appeals
11 twice and to the Supreme Court once. In 2007, the Court of Appeals reversed several dismissals
12 under the filed-rate doctrine and remanded for further proceedings. In 2013, the Court of
13 Appeals reversed several summary judgment orders, ruling that the Natural Gas Act did not
14 preempt state law anti-trust claims and that certain Wisconsin- and Missouri-based Defendants
15 should not have been dismissed for lack of personal jurisdiction. The Supreme Court granted
16 certiorari as to preemption under the Natural Gas Act and affirmed. The case was soon
17 thereafter reassigned to this Court when Judge Pro retired. The Court has issued several
18 dispositive orders and has denied class certification in applicable cases. Several appeals remain
19 pending.

20 On March 27, 2018, the Court of Appeals reversed the Court’s ruling that Reorganized
21 FLI, Inc. (“RFLI”) was entitled to summary judgment on the basis of a release in the NYMEX
22 Action. (ECF No. 2991). The Court of Appeals ruled that New York law governed the release
23 issue, that the language of the release was broad enough to cover RFLI’s claims, but that the
24 release was not enforceable against RFLI under the “identical factual predicate” rule. (*Id.*). The

1 Court has ruled similarly against Plaintiffs–Movants in the present actions (the ‘1019 and ‘915
2 Cases). Plaintiffs–Movants therefore ask the Court to vacate those rulings, reconsider summary
3 judgment on the release issue, and deny it.

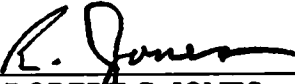
4 As Defendants note in opposition, there is at least one additional issue to be addressed on
5 appeal, i.e., res judicata, which the Court of Appeals has not yet addressed in the already-decided
6 case. The Court of Appeals may determine the present appeals on the res judicata issue, it may
7 affirm on the release issue based on distinctions between the present cases and the already-
8 decided case that this Court or the parties may or may not perceive, it may reverse for similar
9 reasons that it reversed the already-decided case, or it may take some other approach. But the
10 Court will not abruptly interfere with the orderly disposition of the Court of Appeals’
11 determination of related issues in the consolidated cases on the eve of oral argument. Although
12 the case has not yet been heard, the judges on the panel have surely already dedicated time and
13 resources to evaluating the present appeals. Also, granting the present motions would almost
14 certainly result in appeals by Defendants, so there is little argument in favor of judicial economy.

15 **CONCLUSION**

16 IT IS HEREBY ORDERED that the Motion for Reconsideration (ECF No. 2997) is
17 DENIED.

18 IT IS SO ORDERED.

19 Dated this 24th day of July, 2018.

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22 _____
23 ROBERT C. JONES
24 United States District Judge