

May 12, 2014

The Honorable Mary Landrieu
Chairman
Senate Committee on Energy and Natural Resources
304 Dirksen Senate Building
Washington, DC 20510

Dear Chairman Landrieu,

On behalf of the undersigned Louisiana municipal natural gas utilities, we urge you to support reform of Section 5 of the Natural Gas Act (NGA). By providing the Federal Energy Regulatory Commission (FERC) with refund authority, natural gas consumers will be protected from being charged unjust and unreasonable rates in the same manner that electric customers are protected.

Interstate natural gas pipelines are natural monopolies that exercise market power over their customers. For natural gas consumers—with very few exceptions—there is no competitive alternative for the transport of natural gas for cities and towns around the country. For instance, 95 percent of public gas systems are served by a single interstate pipeline. Given the small customer bases of these cities and towns, there is almost no scenario in which another pipeline would put in new infrastructure to compete with the existing pipeline. There isn't enough money to justify the investment and thus the vast majority of natural gas distribution utilities are captive customers of interstate pipelines.

Given the lack of a competitive interstate pipeline market, consumers' only protection against pipeline over-collection is the NGA. The NGA states that customers of interstate pipelines are to be charged "just and reasonable" rates as determined by FERC. FERC approves the rates that pipelines can charge, including the rate of return on invested capital. Under established court precedent, pipeline rates must take into account pipeline costs, including debt and depreciation costs, and allow a return on equity (ROE) that permits pipelines to compete for capital in the marketplace to underwrite new infrastructure. In practice, FERC has determined a just and reasonable rate to be 10-13 percent ROE depending on market conditions.

Though FERC is the agency authorized to ensure that interstate pipeline consumers are protected from being charged unjust and unreasonable rates, their ability to protect consumers from overcharges is limited by the NGA. Under current law, if a customer files a complaint at FERC to address excessive rates and if at the completion of the proceeding, the customer has been found to have been charged an unjust and unreasonable rate, FERC can only adjust the rate downwards prospectively. That is to say, FERC can only change the rates going forward from

the completion of the complaint proceeding and cannot provide refunds to the overcharged customers.

This lack of refund authority stands in contrast to the standing for electric consumers, who do have FERC protection that includes refund authority under the Federal Power Act (FPA) Section 206. If electric customers are found to have been overcharged, FERC can require interstate electric transmission companies to provide a refund back to the date of the filing of the complaint at FERC, known as the “refund effective date” as well as to change the rates prospectively. This refund authority removes the incentive for interstate electric transmission companies to delay the complaint proceedings, as delay simply means enhanced refund obligations to customers resulting from rates that are found to be unjust and unreasonable.

Unfortunately, the absence of such refund authority under the NGA has not surprisingly lead to significant over-collection by interstate pipelines. This fact is shown in an annual study done by the Natural Gas Supply Association (NGSA), which represents natural gas producers. The NGSA study uses publicly available Form 2 data, which are submitted by pipelines to FERC annually, and it analyzes the ROE for 32 major interstate natural gas pipelines—representing 80 percent of the transportation market—over a five-year period. The 2014 study concluded that, for the 2008-2012 period, “pipelines...earned \$2.7 billion in excess of what they would have collected...using an average 12 percent return on equity.”

It is important to understand that the interstate pipeline companies themselves do not deny the reality of over-recovery. Instead they utilize cleverly constructed turns of phrase such as, “retroactive ratemaking,” which have no basis in law or practice but are used to distract policymakers from the reality of the huge over-recovery.

That is why we strongly support legislation to amend Section 5 of the NGA to mirror the FPA Section 206 in terms of refund authority. We believe that empowering FERC to provide refunds to customers proven to have been overcharged back to the date of the filing of a complaint provides sufficient protection for consumers and provides certainty for pipelines.

We would like to respectfully request that you protect Louisiana’s businesses and consumers by supporting legislation to amend Section 5 of the NGA to provide FERC with refund authority. Thank you for your time and consideration of our request. We look forward to working with you on the serious energy challenges that face our country.

Sincerely,

City of Denham Springs

Livingston Parish Gas District 1

Village of Montpelier

East Feliciana Gas Utility District 1

East Baton Rouge Parish, GUD 1

Maringouin Utility

GUD 1 of Vernon Parish

Town of Kentwood

Town of Livonia

Town of Jackson

City of Scott

City of DeQuincy

Gas Utility District 1 of West Feliciana Parish

Town of Jonesville

Village of Estherwood

Town of Slaughter

Village of Tangipahoa

Town of Melville

City of Clinton

City of Walker

Village of Forest Hill

St. James Parish

Town of Logansport

Town of Carencro

Town of St. Francisville