



# AMERICAN PUBLIC GAS ASSOCIATION

January 14, 2009

The Honorable Maria Cantwell  
U.S. Senator  
Washington, D.C. 20510

Dear Senator Cantwell:

On behalf of the publicly-owned, municipal natural gas systems in Washington State, we would like to thank you for your leadership in Congress and as a member of the Senate Energy & Natural Resources Committee. We are also writing to request you to consider introducing legislation to amend Section 5 of the Natural Gas Act since, as currently written, it is a law that unfairly benefits natural gas pipelines at the expense of natural gas consumers. Appropriate reform of Section 5 is a necessary tool for consumers to prevent their pipelines from overcharging them for the transportation of natural gas and to put them on parity with electric consumers under the Federal Power Act. All five sitting commissioners at the Federal Energy Regulatory Commission (FERC) have noted the need for such legislation.

Under Natural Gas Act Section 5, it is not economical for customers to file a complaint case with the FERC against their pipelines even if they are being overcharged. The reason it is not economical is because, even if the FERC determines that the pipeline has been overcharging its customers, rate relief is only applied from the date of the FERC ruling (and not from the date the complaint was filed). Under current law a pipeline will continue to over-collect during the entire complaint case proceeding without fear of making its customers whole for past overcharges, which means that the pipeline has every incentive to extend the complaint case (through various litigation tactics), and as a result a typical complaint case is likely to last over two years.

The effect of these tactics is twofold: first, the affected pipeline can continue to charge excessive rates without fear of refunds for the duration of the proceeding. Second, since customers understand how the game is played, they seldom initiate complaints, knowing full well that their resources will be exhausted under this process and that, even if they prevail, there will be no refunds of the overcharges. Thus, as noted, NGA Section 5 complaint proceedings are rarely initiated by customers, no matter how egregious the overcharges.

A virtually identical problem existed at FERC in the 1970s and 1980s with respect to electric utilities. At that time very few complaints were being filed under Federal Power Act Section 206 (the counterpart of NGA Section 5) because there was no effective way to timely stop electric utilities from overcharging their customers. However, Congress recognized this inequity and fixed it in 1988 with passage of the Regulatory Fairness Act (which was further amended in the Energy Policy Act of 2005). Now under FPA Section 206 refunds are due from the date that the complaint was filed if the FERC determines that the electric utility was overcharging its customers under the "just and reasonable" rate standard. This system has been effective.

We thank you for consideration of this request. Please contact any of the systems listed below or our trade association in Washington, the American Public Gas Association ([www.apga.org](http://www.apga.org)), with any questions you may have regarding this important matter.

Sincerely,

Dave Schmidt  
City Administrator  
City of Buckley, WA

Bob Titus  
Energy Services Director  
City of Ellensburg, WA

Ed Hawthorne  
Gas Utility Manager  
City of Enumclaw, WA