



AMERICAN PUBLIC GAS ASSOCIATION

January 15, 2009

President-Elect Barack Obama
Office of the President-Elect
Washington, DC 20270

Dear President-Elect Obama:

In the current economic climate, policies that prevent consumers from being overcharged for the fuel used to heat their homes and cook their food means more disposable income to spend on the other necessities of life. Unfortunately, the current regulatory process for setting pipeline transportation rates actually serves the opposite purpose by favoring natural gas pipelines at the expense of consumers. For this reason, the American Public Gas Association (APGA) strongly urges you to support revisions to Section 5 of the Natural Gas Act – revisions that have already been enacted to protect electric consumers and that all sitting members of the Federal Energy Regulatory Commission (FERC) support.

APGA is the national association of publicly-owned natural gas distribution systems. There are approximately 1,000 public gas systems in 36 states. Publicly-owned gas systems are not-for-profit retail distribution entities that are owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution facilities. Their focus is on providing reliable and affordable service to their customers.

The Natural Gas Act (NGA) requires pipelines to charge “just and reasonable” rates for the transportation of natural gas. It is appropriate that pipelines receive a just and reasonable rate of return as this facilitates the development of an infrastructure that meets consumer needs. The NGA also provides in Section 5 that if a customer believes it is being overcharged by the pipeline company, it may file a complaint with FERC.

However, there is a fatal flaw in NGA Section 5, which is that rate relief is only available 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. This 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 this system is twofold: first, the affected pipeline can continue to charge excessive rates without fear of refunds for the duration of the proceeding (and substantial data exists showing the outrageous returns being earned by interstate pipelines under rates that have not been reviewed for many years). 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.

There is no reason to treat electric utilities and gas pipelines differently when it comes to the ability of FERC to protect customers from paying unjust and unreasonable rates. FERC recently affirmed this when, at a recent Open Meeting, Chairman Kelliher and the Commissioners openly stated their support for legislation to amend Section 5 and to bring parity in the manner in which overcharged customers are treated under the Federal Power and Natural Gas Acts. Customers of regulated entities should be paying just and reasonable rates and no more. That is not now the case for customers of interstate pipelines.

APGA strongly urges you to stand with consumers (and with the FERC commissioners) in supporting revisions to Section 5. We look forward to working with you and your administration on this and other natural gas issues in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Bert Kalisch". The signature is fluid and cursive, with a large initial "B" and "K".

Bert Kalisch
President & CEO