



AMERICAN PUBLIC GAS ASSOCIATION

July 15, 2008

The Honorable Joseph T. Kelliher
Chairman
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Dear Chairman Kelliher:

I again thank you for meeting with representatives from the American Public Gas Association (APGA) on July 10th. It is very helpful for our members both to share with you our concerns and hear your views on the various issues.

Of the issues we covered during our visit, the one on which we seemed furthest apart was the fuel retention matter. We applauded the Commission for taking the initiative last year to issue the Notice of Inquiry (NOI). The Commission observed, among other things, that a Natural Gas Supply Association study indicated that the major pipelines generated about \$2.1 billion in excess retained fuel over the five-year period ending in 2005 (¶ 10); and, that pipeline-filed data revealed that based on 2005 data, major pipelines retained or carried over in that year alone a net sum of 97 Bcf in fuel *beyond* what was consumed, lost, or unaccounted for. The Commission expressly stated that this translates to \$711 billion at average 2005 prices (¶ 11), and APGA suggests that this would translate to over \$1 billion at today's gas prices. In other words, the windfall experienced by pipelines that use either stated fuel retention rates or trackers without true-up mechanisms, and hence the burden on gas consumers, is staggering.

We did not understand you to take issue with the magnitude of the over-recovery or the need to take action; rather, we understood you to say that because some pipelines may have low stated fuel retention percentages, an across-the-board action by the Commission declaring stated fuel retention rates to be unjust and unreasonable might be difficult to justify. We respectfully disagree.

What is certain from the data gathered by the Commission is that pipelines rely on stated fuel retention rates or on trackers without true-ups to generate huge profits that go straight to the bottom line. The determinative fact is not that a given pipeline has a high or low fuel retention number – rather, it is that the number, whether high or low, is above the costs experienced by the pipeline, which means by definition that the pipeline is over-recovering and the consumers are over-paying.

The Commission has not been reluctant to take industry-wide action where it recognizes a pervasive problem, even if that problem did not necessarily apply to all affected entities. The actions taken by the Commission in Order 888 and Order 890 series are illustrative. Not every utility was determined to be discriminating unduly in those orders, but the Commission found sufficient evidence of discrimination and of the incentive to discriminate that it took across-the-board action in order to protect power consumers. The exact same situation prevails here: many (likely all) pipelines with stated fuel retention rates are over-recovering their costs and all of them have the incentive to over-recover and move the dollars to the bottom line. The Commission should ask itself— When was the last time a pipeline made a Natural Gas Act section 4 filing to increase its fuel retention rate? The absence of such filings simply reflects the profitability of the existing situation.

You have been at the forefront of those emphasizing that “the Commission is a consumer protection agency. Our primary task since the 1930s has been to guard the consumer from exploitation.”¹ We believe, consistent with that philosophy, the Commission should take decisive action in this area, consistent with the data that is set forth in its own NOI.

Again, thank you for meeting with APGA and for your willingness to be both a good listener and an able spokesperson for Commission policy. We look forward to many more such meetings.

Sincerely,



Bert Kalisch

cc: Commissioner Kelly
Commissioner Moeller
Commissioner Spitzer
Commissioner Wellinghoff

¹ Testimony of Joseph T. Kelliher, Chairman, Federal Energy Regulatory Commission, Before the Committee on Energy and Natural Resources, United States Senate, May 1, 2008, at page 1. Even more recently (May 15, 2008), the Chairman stated that “[t]he principal duty of the Commission in the area of economic regulation is to guard the consumer from exploitation.” <http://www.ferc.gov/news/statements-speeches/kelliher/2008/05-15-08-kelliher-E-1.asp>.