March 27, 2015

The Honorable Lisa Murkowski
Chairman
Committee on Energy and Natural Resources
Washington, DC 20510

Dear Chairman Murkowski,

On behalf of the American Public Gas Association (APGA) and the Process Gas Consumers Group (PGC), thank you for your continued focus on pursuing policies that ensure abundant and affordable energy for America's consumers. It is on this issue of affordable energy that we would like to respectfully request you to review the recently released Natural Gas Supply Association (NGSA) study, "Pipeline Cost Recovery Report: 2009-2013" (see attached NGSA executive summary). The NGSA study, which has been released on an annual basis for the last 15 years, analyzes pipeline financial data that they submit to the Federal Energy Regulatory Commission (FERC) reflecting their annual costs, revenues, throughput and the like resulting from the transportation rates they charge around the country. The study finds that many interstate pipelines are charging unjust and unreasonable rates in violation of the Natural Gas Act (NGA), burdening homeowners and manufacturers with higher energy costs.

APGA is the national association for publicly-owned natural gas distribution systems. There are currently approximately 1,000 public gas systems located in 37 states. Publicly-owned gas systems are not-for-profit, retail distribution entities 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.

PGC is a national trade association of industrial natural gas consumers, organized to promote the development and adoption of coordinated, rational, and consistent federal and state policies governing interstate natural gas service to industrial gas users. PGC members own and operate hundreds of manufacturing plants and facilities in virtually every state in the nation and consume natural gas delivered through interstate natural gas pipelines systems throughout the United States.

The NGSA study analyzes the return on equity (ROE) for 32 major interstate natural gas pipelines, which represent 80 percent of the transmission market, over a five-year period. The study uses an exceedingly generous 12 percent ROE average and found that almost three-fourths of the pipelines analyzed earned returns above that benchmark, with one pipeline, the Natural Gas Pipeline Company of America LLC, garnering a five-year average ROE of 34.4 percent. All told, the 32 pipelines in the aggregate over-recovered by some $3 billion -- money largely contributed by hardworking families and energy-intensive manufacturers.

This $3 billion over-recovery is an increase of $300 million over last year's study, and contradicts the pipeline-proffered notion that over-recovery is an issue being solved by the market. Pipelines are monopoly enterprises, and hence any suggestion that the "market" will address the pipeline over-recovery problem simply has no legs, as the NGSA numbers show. Effective regulation is the only solution to recovery of monopoly profits.

Even though pipeline rates are under the jurisdiction of FERC, the agency is effectively handcuffed by its inability to order refunds under Section 5 of the NGA. Currently, under Section 5, if a customer has evidence of being charged beyond a just and reasonable rate and successfully completes a complaint proceeding, FERC may only rule that a rate reduction takes effect prospectively after FERC's order is issued, with no means of requiring refunds to the affected customers the past overcharges incurred between the date the complaint was filed and the date FERC rules that the rates are unjust and unreasonable. This prospective rate reduction with no refund authority means the pipelines have a strong incentive to delay the proceeding ad infinitum since no refunds can be ordered under NGA Section 5 during the interim even if the pipelines are determined at the end of the day to have overcharged their customers.

In contrast, on the electric side, in 1988 Congress passed and President Reagan signed into law the Regulatory Fairness Act. This law, among other things, amended Section 206 of the Federal Power Act (FPA) and gave FERC the authority to provide refunds back to the date the complaint against an electric transmission provider was filed if the complaint was found to be meritorious. It is essential to understand that refunds are only paid to customers if electric utilities have been found by the FERC to have charged beyond a just and reasonable rate and such refunds only relate to overcharges from and after the date of the complaint. The same would be true under an amended NGA Section 5.

Just as Congress fixed the FPA, Congress should now provide FERC with that same refund authority under NGA Section 5. FERC's ability to exercise its authority under NGA Section 5 would not in any way affect interstate pipeline infrastructure development despite persistent and unfounded pipeline claims to the contrary, as discussed below.

First, new infrastructure projects are certificated to earn healthy equity returns, usually around 12 percent or higher. NGA Section 5 reform does not affect the ability of these projects to earn such returns; rather, NGA Section 5 reform is only applicable to those egregious over-earners whose customers are underwriting returns far in excess of the allowed returns.

Second, virtually all significant new infrastructure projects are undertaken on the basis of negotiated contracts between the transporter and the shippers. Negotiated contracts are not subject to rate changes by the transporter under NGA Section 4 or rate challenges by shippers under NGA Section 5; the rate is fixed for the term through bilateral negotiations. These negotiated contracts form the basis for the project developer to go to the marketplace and raise funds. Thus, the argument that NGA Section 5 reform would deter new infrastructure development is inaccurate and misleading.

Third, by law, FERC in setting rates is required to provide for a rate of return that permits the affected pipeline to recover all debt costs plus raise capital in the marketplace at reasonable rates as the Supreme Court determined long ago in *Federal Power Commission vs. Hope Natural Gas*. FERC has done just that, and the financial markets understand this, so NGA Section 5 reform will not affect the ability of interstate pipelines to raise capital in the marketplace.

Fourth, FERC itself, which is very pro-infrastructure, understands that the argument that Section 5 reform would be bad for infrastructure development and thus bad for job development, is wrong, for all of the reasons noted above, which explains why historically all Commissioners, including the Chairman (and prior two Chairmen), have supported NGA Section 5 reform.

This infrastructure argument, like all other pipeline arguments, is nothing but a strawman raised by the pipelines because they have no defense on the merits against Section 5 reform—they are overcharging customers because the rates of many of them are no longer just and reasonable. Absent NGA Section 5 reform, FERC, which is supposed to ensure that pipelines charge and consumers pay just and reasonable rates, is basically helpless to prevent allowing pipelines to defeat the purpose of the NGA.

To be clear, APGA and PGC strongly support the growth and expansion of interstate natural gas pipelines. In fact, ensuring new pipeline infrastructure is in our members' interests, as 95 percent of APGA's members are captive to a single interstate pipeline, meaning that additional pipeline infrastructure could provide an opportunity to break pipeline monopolies over natural gas for our member systems. That said, it is absolutely critical that the healthy growth of these pipelines be achieved within the confines of the Natural Gas Act's mandate that the customers of these pipelines pay just and reasonable rates for transportation of natural gas supplies, which are important to America's economic prosperity and security.

It is also worth noting that pipelines never argue that they are not over-recovering; only that if caught, they should not have to refund the overcharges. Congress should not allow itself to be fooled by pipeline obfuscation and meritless arguments and therefore continue to force businesses and consumers to be charged unjust and unreasonable rates by monopolies.

As the Committee considers comprehensive energy legislation, we urge you to address NGA Section 5 and provide natural gas consumers with the same level of protection from overcharges that currently exists for electric consumers.

Sincerely,

Bert Kalisch
President & CEO
American Public Gas Association
201 Massachusetts Ave NE Suite C-4
Washington, DC 20002
(202) 464-2742
bkalisch@apga.org

/s/ David Ciarlone
David Ciarlone
Chairman
Process Gas Consumers Group
1909 K Street NW
Washington, DC 20006
(412) 553-4163
David.Ciarlone@alcoa.com