



# AMERICAN PUBLIC GAS ASSOCIATION

July 21, 2015

The Honorable Ed Whitfield  
Chairman  
Subcommittee on Energy and Power  
2125 Rayburn  
Washington, DC 20515  
Re: User Fees

The Honorable Bobby Rush  
Ranking Member  
Subcommittee on Energy and Power  
2322A Rayburn  
Washington, DC 20515

Dear Chairman Whitfield,

On behalf of the American Public Gas Association (APGA), I would like to take this opportunity to respond to statements made regarding user fees in the Interstate Natural Gas Association of America's (INGAA) testimony at the July 14 Energy and Power Subcommittee hearing on pipeline safety. APGA maintains that the current user fee structure has worked well and that there is no need to change the manner in which user fees are collected.

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 including approximately 50 in Kentucky. 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.

APGA is concerned that a few statements made by INGAA in its testimony mischaracterize the facts. Specifically, in regards to—

1. A claim that DOT/PHMSA is engaged in "advocacy" for a change in the user fee structure. There is no public statement from DOT/PHMSA to support such a claim.
2. A claim that DOT/PHMSA supports any change in the current user fee structure. PHMSA's position on the current user fee structure has not changed from the position communicated in a letter sent to Congress in which PHMSA expressly supports the current user fee structure (see attached). Such an unsupported claim may give Congress the false impression that DOT is supportive of a change in the current user fee structure.
3. A claim that a large block of "users" are not paying the user fee. Interstate pipelines "pay" the user fee in a manner identical to how K-Mart "pays" the sales tax. K-Mart "collects" the sales tax from the customer in the transaction in a manner identical to how an INGAA member "collects" the user fee from its customers (i.e., a FERC-approved rate that includes the user fee). We are very concerned about the impression such a distorted characterization would make on members of the committee if this claim were to be left unchecked.

In its testimony, INGAA states:

“While not INGAA’s top priority, the PHMSA user fee and funding regime needs to be updated. The law authorizing the user fee, enacted in 1986, has not kept up with the times. This Committee recently initiated an investigation of the Nuclear Regulatory Commission user fee. PHMSA’s user fees (there is more than one) also need scrutiny and a legislative update.”

“As part of the appropriations process, the Department of Transportation recently advocated amending the statutory authority for one of these user fees. To their credit, the House and Senate Appropriations Committees refused to legislate on an appropriations bill. The Senate Appropriations Committee also weighed in on another PHMSA user fee matter, related to the allocation of the Pipeline Safety Fund user fee. The committee’s report on the Transportation/HUD appropriations bill included the following statement:

*“Pipeline Safety User Fee Allocation.—The pipeline safety program is largely funded through user fees on natural gas transmission pipelines, jurisdictional hazardous liquid pipelines, and liquefied natural gas terminal operators. Recent authorizations have increased the responsibilities for PHMSA and the States with respect to the safety of our Nation’s pipelines. Given this change in scope of the pipeline safety program, the Committee directs PHMSA to review the user fee collection process to determine if it should be modified to more equitably allocate the cost of the pipeline program across the industry segments covered by Federal and State oversight. PHMSA shall submit a report to both the House and Senate Committees on Appropriations within 60 days of enactment of this act, that summarizes the agency’s statutory authority to revise the fee structure, its assessment of the current fee structure, and any recommendations for changes to the fee structure that should be considered by Congress as it considers reauthorization of PHMSA.*

“INGAA agrees, and urges that this be done in a comprehensive fashion. The existing Pipeline Safety Fund fee is not assessed on all regulated sectors of the natural gas industry, but rather only on gas transmission operators. This gives rise to an important question: If a large block of “users” are not paying the user fee, is it still a “user fee” under budget rules and precedent? The answer to this question has implications for both Congressional committee jurisdiction and whether the dollars raised must be sent to the Treasury rather than reserved to offset PHMSA’s costs.

“We respectfully suggest that the authorizing committees review the current state of this user fee, and amend the statute to make this a true user fee assessed on all regulated sectors of the natural gas industry.”

APGA is concerned that the statement regarding the DOT/PHMSA’s “advocacy” for a change in the user fee structure may give Congress the impression that DOT is advocating for a change in the Pipeline Safety Fund user fee, which is untrue. By reading INGAA’s testimony, which quickly shifts from the topic of one DOT-advocated user fee change to the Senate Appropriations Committee report, one could potentially infer that DOT is supporting a change in the user fee

structure when in fact it was INGAA and its members that convinced Senate appropriators to insert the language into the Transportation/HUD appropriations report.

In addition, it is APGA's understanding that PHMSA's position on the current user fee structure has not changed from the position communicated in the attached letter sent to Congress several years ago in which PHMSA expressed support for the user fee structure that is currently in place.

Third, and perhaps most importantly, despite the impression given in INGAA's testimony, the fact is that the Pipeline Safety Fund user fee is paid by all sectors of the natural gas industry, not just the pipelines; any statement to the contrary is inaccurate. The Pipeline Safety Fund user fee is collected by interstate pipelines; its cost is includible in pipeline operators' rates charged to customers; and it is paid by all pipeline customers. INGAA's members are not bearing any cost for the fees; they are merely collectors of the fees, and any costs they incur in the collection are recovered in the FERC-approved base rates charged to their customers.

Should pipelines need to increase the base rates due to an increase in the Pipeline Safety Fund user fee, they can ask FERC for a rate increase by filing a Section 4 rate case. APGA is unaware of any instance in which such an increase has been denied.

Given that all sectors of the industry are paying the Pipeline Safety User Fund Fee and that pipelines can ask for a rate increase at any time to pass through the user fee, the logical question to be asked is, why is INGAA pushing for a change in the system at all. Many interstate pipelines are reluctant to file for a Section 4 rate adjustment because many pipelines are already substantially over-recovering their legitimate cost of service under the "just and reasonable" standard of the Natural Gas Act (NGA). According to the Natural Gas Supply Association's (NGSA) study, interstate pipelines over-recovered by some \$3.0 billion from 2009-2013, and that calculation assumes an extremely generous 12% return on equity. This over-recovery explains why many INGAA members do not want to have the FERC examine their rates through the Section 4 process to remedy the increase in user fees, as FERC will very likely lower their rates rather than increase them. To put it in simple terms, INGAA wants to move the user fees downstream rather than expose its members to a FERC rate review under the NGA just and reasonable standard.

Rather than considering an unwarranted change in the user fee structure, Congress should address the real, persistent, and indisputable fact of pipeline over-recovery by including language in the House energy bill to amend Section 5 of the Natural Gas Act to provide refund authority to FERC. This would ensure that customers which file a Section 5 complaint at the FERC and triumph on the merits will be provided refunds back to the date of the filing of the complaint in the same manner that electric customers are protected under Section 206 of the Federal Power Act. Then, and only then, will billions of dollars of homeowners' and manufacturers' money stay in the communities served by interstate pipelines rather than traveling upstream as shareholder profits.

We thank you for your time and consideration of this important issue and stand ready to work

with you on this and any other natural gas issue.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bert Kalisch". The signature is fluid and cursive, with the first name "Bert" and last name "Kalisch" clearly distinguishable.

Bert Kalisch  
President & CEO  
APGA