



AMERICAN PUBLIC GAS ASSOCIATION

April 8, 2013

The Honorable Ron Wyden
Chairman, Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Wyden,

On behalf of the American Public Gas Association (APGA), I would like to draw your attention to the Natural Gas Supply Association's (NGSA) recently released study, "Pipeline Cost Recovery Report: 2007-2011" (see attached NGSA executive summary). The NGSA study reaffirms the fact that the transportation rates that numerous interstate natural gas pipelines charge are no longer just and reasonable as evidenced by the many billions of dollars of over-collections, which result in artificially inflated energy costs for businesses and homeowners across the country.

APGA is the national association for publicly-owned natural gas distribution systems. There are currently approximately 1,000 public gas systems located in 36 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.

The NGSA study is released on an annual basis and analyzes the return on equity for 32 major interstate natural gas pipelines (which represent 80% of the transmission market) over a five-year period. The study concludes that, for the 2007-2011 period, using a generous 12% as a nominal target allowed return, "pipelines...earned \$3.4 billion over the five-year period in excess of what they would have collected with an average 12 percent return on equity, even taking into account the fourteen pipelines that under-recovered."

This huge windfall is not the exception to the rule; it continues to be the reality with which customers of interstate pipeline have struggled for years. Over the last several NGSA reports, the margin of over-recovery has consistently exceeded \$3 billion. This demonstrates that interstate pipelines continue to over-recover at the expense of job-creating businesses and families struggling to make ends meet. Congress must provide FERC with the tools to address this intolerable situation by amending the Natural Gas Act (NGA) to provide FERC with the same refund authority it has under the Federal Power Act, to ensure that consumers pay just and reasonable rates and are not subject to gross overcharges. Unless the NGA is amended to protect

consumers, every year hundreds of millions of dollars will continue to flow out of local communities upstream to pad pipeline's profits.

The reason for this gross overcharge situation is very straightforward—under NGA Section 5, the FERC does not have the refund authority to effectively restrain pipeline over-recovery. This was also the situation under the comparable complaint section of the Federal Power Act (Section 206) until 1988, when Congress took stock of the situation and amended FPA Section 206 to give FERC the authority to order refunds from and after the date a complaint is filed. Thus, under FPA Section 206 if an electric transmission provider is found to have overcharged customers beyond a “just and reasonable” rate, that entity must refund the overcharges to its customers from and after the date of the complaint, whereas by contrast FERC does not have the same authority under the NGA to provide for reimbursement to overcharged gas transportation customers.

Since under NGA Section 5 the FERC may only rule that a rate reduction takes effect prospectively *after* FERC's order is issued, the pipelines have an obvious and strong incentive to delay the proceeding interminably (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). Historically, all sitting FERC commissioners, without regard to party affiliation, have decried this absence of refund authority under NGA Section 5. This includes former Chairmen Pat Woods and Joe Kelliher, both Republicans, and current Chairman Wellinghoff, a Democrat.

Just as Congress fixed the FPA, Congress should now provide FERC with that same refund authority under NGA Section 5. The FERC's ability to exercise its authority under FPA Section 206 is not retroactive ratemaking. Refunds are only paid to customers if 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.

Given the overwhelming and un rebutted evidence of pipeline over-recovery, the question that requires answering is whether there is a credible public policy rationale for permitting this to continue. The short answer is no; the longer answer is that the most frequently heard response from the pipelines is that providing FERC with this consumer protection tool would have a negative impact upon a pipeline's ability to attract new capital, and this in turn would have an adverse impact on infrastructure investment and job creation. This argument is a red herring with no basis in fact. The FERC, in establishing just and reasonable rates, provides for the recovery of all costs, including debt costs and a fair return on equity. And a fair return on equity must, as the Supreme Court long ago mandated, permit the regulated utility to go to the marketplace to raise capital at reasonable rates.

APGA strongly supports the growth and expansion of interstate natural gas pipelines. In short, our businesses depend on them. However, 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 critical to America's economic prosperity and security.

Ironically, the pipelines never argue that they are not over-recovering their costs - only that if caught they should not have to refund the overcharges. Congress should not allow itself to be fooled by arguments that are paper mache thin and that have been recognized by the regulators themselves to have no merit.

As the Committee considers natural gas legislation, I 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,

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