AMERICAN PUBLIC GAS ASSOCIATION

March 22, 2018

The Honorable Frank Pallone, Jr.
Ranking Member
House Committee on Energy and Commerce
2322A Rayburn House Office Building
Washington, DC 20515

Dear Ranking Member Pallone,

We are writing to bring your attention to an issue related to the passage of the Tax Cuts and Jobs Act of 2017 and the regulated rates being charged by natural gas pipelines.

When Congress lowered the corporate tax rate from 35% to 21% effective January 1, 2018, it intended that lifting the tax burden on American corporations and citizens would stimulate the economy. As explained below, the legislative authority under which Federal Energy Regulatory Commission (FERC) operates is one of the impediments to that result.

All regulated investor-owned utilities pay federal taxes on their profit or return on investment. Cost-of-service rates include a tax allowance so that ratepayers fund the payment of those taxes. State regulatory commissions across the country are acting now to align those tax allowances to the 21% rate and lower utility rates accordingly. Commissioner Robert Powelson of the FERC has said that this "historic tax reform measure could provide utility customers across the U.S. sizeable rate reductions ... In some cases, customers are looking at between $80 and $90 per year in potential rate reductions."

With regard to the regulated rates of interstate natural gas pipelines, they remain founded upon a corporate tax rate of 35%, not the new current 21% rate. Also, these pipelines maintain accumulated deferred income tax (ADIT) accounts are now significantly overfunded because the tax has been collected from ratepayers at 35% but will be paid in the future at 21%.

While the Commission has recently issued an Order at its March 15th meeting addressing this issue, consumers will still have missed out on the impact of lower taxes and have been overcharged hundreds of millions of dollars. This is because under the Natural Gas Act, FERC can only act prospectively to lower unjust and unreasonable

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rates. Each month that passes means that consumers fail to see the benefit of the new tax rate in their rates.

The fact is that the Commission is effectively hamstrung by Congress' writing of the Section 5 of the Natural Gas Act and its failure to update it appropriately. 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 refunding the affected customers. 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, Congress in 1988 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 of filing of a complaint against an electric transmission provider if it had been found by the FERC to have charged and unjust and unreasonable rate. 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.

The Tax Cuts and Jobs Act of 2017 has shined a spotlight on the injustice in the NGA. That legislative oversight is now thwarting the intent of Congress to improve the American economy.

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

Sincerely,

Bert Kalisch

Bert Kalisch
President & CEO