AMERICAN PUBLIC GAS ASSOCIATION

April 2, 2014

The Honorable Henry Waxman
Ranking Member
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Waxman,

On behalf of the American Public Gas Association (APGA), I would like to bring to your attention the recent Natural Gas Supply Association's (NGSA) study— Pipeline Cost Recovery Report: 2008-2012 (see attached NGSA executive summary). The NGSA study, which relies upon data filed by pipelines at the FERC, again demonstrates that the transportation rates charged by numerous interstate natural gas pipelines continue to be unjust and unreasonable. This irrefutable fact is evidenced by the many billions of dollars of over-collections that 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 approximately 1,000 public gas systems located in 37 states, including over 90 systems in Louisiana. 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 every year and analyzes the return on equity (ROE) for 32 major interstate natural gas pipelines – which represent 80% of the transmission market – over a five-year period. The study concludes that during for the 2008-2012 period, "pipelines . . . earned $2.7 billion in excess of what they would have collected…using an average 12% return on equity."

Multi-billion dollar pipeline over-recovery in contravention of the Natural Gas Act's "just and reasonable rate" standard continues to be the norm. Over the last several NGSA reports, the annual margin of over-recovery has consistently exceeded half a billion dollars. With impunity, these monopolies continue to realize ROE in excess of 12%, some in excess of 30%, all at the expense of job-creating businesses and families struggling to make ends meet.

Congress must provide FERC with the one tool necessary to address this intolerable situation— amending the Natural Gas Act (NGA) to provide FERC with the same refund authority it has

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under the Federal Power Act. Until the NGA is amended, pipelines will continue to extract hundreds of millions of dollars out of local communities, and send those dollars upstream to inflate pipelines' 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 assessed 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 a customer beyond the FERC-approved "just and reasonable" rate, the FERC has authority to order the electric company to issue a refund for the overcharges from the date the complaint was filed. Congress determined that providing the FERC with refund authority under FPA Section 206 was not retroactive ratemaking.

Since there is no FERC refund authority under NGA Section 5, experience clearly demonstrates the pipelines are incentivized to delay the proceeding ad infinitum. Under today's NGA Section 5, the FERC may only order a rate reduction *after* FERC's order that a rate is unjust and unreasonable. In other words, the pipeline may pocket all of the dollars collected above the FERC-approved ROE from the date the complaint is filed to the final order. Currently, any and all relief is prospective.

Historically, regardless of party affiliation, all sitting FERC commissioners have decried this absence of refund authority under NGA Section 5. This includes former Chairmen Pat Wood and Joe Kelliher, both Republicans, and former Chairman Wellinghoff and current Acting Chairman LaFleur, both Democrats.

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 <u>not</u> retroactive ratemaking, which is a cleverly constructed phrase to distract policymakers from the real issue of over-recovery. Pipelines are following the old Washington tactic of— if you don't like the conversation, change the subject.

It is critical to understand that refunds issued under FPA Section 206 are only paid to customers if electric utilities have been found by the FERC to have charged beyond a just and reasonable rate (i.e., in excess of their FERC-approved ROE), 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 unrebutted evidence of pipeline over-recovery, there is no credible public policy rationale for permitting this inequity to continue. The most frequently heard response from the pipelines is that forcing them to refund overcharges would negatively impact a pipeline's ability to attract new capital, and this in turn would adversely impact infrastructure investments and job creation. This red herring argument has 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. Currently, about 95% of our members are captive to a single interstate pipeline. In order to realize options and alternatives for capacity, it is in the best interest of APGA members to advocate for increasing interstate pipeline infrastructure. However, it is essential that pipeline growth be achieved within the confines of the Natural Gas Act's mandate that pipeline customers pay just and reasonable rates for transportation of natural gas supplies, which are critical to America's economic prosperity and security.

Finally, but most telling of all, is that pipelines never argue or even attempt to refute 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 have no merit and therefore continue to force businesses and consumers to be charged unjust and unreasonable rates by monopolies. It will take an act of Congress to stop the flow of over-recovered dollars from leaving local communities to unknown points back upstream in the pipeline chain.

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,

Bert Kalisch
President & CEO