



AMERICAN PUBLIC GAS ASSOCIATION

February 5, 2019

Representative Richard Neal
2309 Rayburn House Office Building
Washington, DC 20515

Representative Frank Pallone
2107 Rayburn House Office Building
Washington, DC 20515

Re: Natural Gas Consumers Fairness

Dear Congressmen Neal and Pallone,

As the Ways and Means and Energy and Commerce Committees begin the 116th Congress, APGA requests your Committees investigate how interstate pipelines are retaining the tax windfall created by the Tax Cuts and Jobs Act of 2017 (TCJA) under pipeline tariff rates approved by the Federal Energy Regulatory Committee (FERC). We request that you move to require that interstate pipelines refund tax overcollections to consumers.

Because Congress has not reformed Section 5 of the NGA, natural gas consumers are overcharged hundreds of millions of dollars by regulated interstate pipelines each year. In the case of the TCJA, the Federal Energy Regulatory Commission (FERC) is unable to compel interstate natural gas pipelines to refund overcollections of taxes through tariffs based on tax rates established before the TCJA.

To understand the issue, it is important to recognize how natural gas and electricity consumers are treated under the Natural Gas Act (NGA) and the Federal Power Act (FPA), respectively. Intended to be parallel statutes, these laws establish FERC's role in regulating gas and electric utilities. Part of both laws outline the processes to deal with over-collections (also referred to as overcharges) – instances in which entities that transport gas or electricity over natural gas pipelines or an electric transmission line, which are subject to a federal tariff, have been charged an “unjust and unreasonable” rate.

FERC or a customer can file a rate complaint under Section 206 of the FPA. If FERC later finds that an electric utility has charged an unjust and unreasonable rate, then FERC may order that the entity refund overcharged funds from the time that the complaint was filed. Simply, a refund date is established for a rate complaint under the FPA.

The NGA offers no such protections for overcharged entities. Under Section 5 of the NGA, entities that believe they have been overcharged can still file a complaint against an interstate natural gas pipeline – just like the FPA. However, FERC does not have authority to establish a refund date from and order refunds of over-collections under Section 5, unlike the FPA. This creates an incentive for interstate natural gas pipelines to prolong such cases because they get to pocket and keep all of the overcharged

monies. Moreover, they are free to start a new case to raise rates at any time. That scheme is a disincentive to FERC or customers to file rate complaints. Entities who believe they are subject to an overcharge rarely participate in Section 5 cases because it is prohibitively costly, lengthy, and will not result in a refund.

The TCJA is a case study in the unfairness imposed on consumers by Congress' failure to align the NGA with the FPA. The TCJA has created a situation where interstate pipelines are over-collecting for taxes and keeping the windfall. All utilities, including federally regulated pipelines, are allowed a federal income tax allowance in rates so that ratepayers pay the utilities taxes. Therefore, state regulated utilities have been directed to adjust rates as of January 1, 2018 to reflect the lower tax costs. Not interstate pipelines.

FERC has addressed the impact of TCJA in a rulemaking that created a new, one-time filing requirement for interstate natural gas pipelines. FERC did what it could within its current legal authority to encourage pipelines to lower rates voluntarily, but few have done so. This has required FERC to commence several NGA Section 5 rate investigations—including one for a pipeline that lowered its rates.

This effort, while necessary, places a massive administrative burden upon FERC and interested parties by requiring this new pipeline filing for nearly 90 pipelines. It is less than one-third of the way through that review and has already concluded that many pipelines are over-collecting as a result of the tax change. Because FERC's only remedy for overcollection is prospective rate relief some pipelines will continue to collect windfall profits for two years or more.

Due to the magnitude of the issue, APGA urges the Ways and Means and Energy and Commerce Committees to investigate the extent to which natural gas customers have been impacted by being charged incorrect corporate tax rates in pipeline rates. Doing so will shine a light on a longstanding consumer inequality. Congress should harmonize FERC's refund authority in the NGA with the FPA.

Sincerely,



Bert Kalisch
President and CEO, American Public Gas Association

Cc: Representative Kevin Brady

Representative Greg Walden