UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Interstate and Intrastate Natural Gas	)	
Pipelines; Rate Changes Related To	)	Docket No. RM18-11-000
Federal Income Tax Rate	)	

COMMENTS OF THE AMERICAN PUBLIC GAS ASSOCIATION

Pursuant to notice of the Notice of Proposed Rulemaking (NOPR) issued by the Federal Energy Regulatory Commission (FERC or Commission) (83 Fed. Reg. 1288), the American Public Gas Association (APGA) files these comments concerning the impact on interstate pipeline rates of the Tax Cuts and Job Act (Tax Act).

I. COMMUNICATIONS

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II. STATEMENT OF INTEREST

APGA is the national, non-profit association of publicly-owned natural gas distribution systems, with over 730 members in 36 states. Overall, there are approximately 1,000 publicly-owned systems in the United States. Publicly-owned gas systems are not-for-profit retail distribution entities that are 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 members purchase interstate natural gas transportation services from pipelines at rates and under terms and conditions that are regulated by the Commission, so they are of course affected by the outcome of this proceeding.

III. EXECUTIVE SUMMARY: APGA SUPPORTS THE NOPR

APGA was one of the first—if not the first—group of pipeline customers to request that the Commission take prompt action to implement the Tax Act so that ratepayers would justly receive the rate benefit from lower federal income tax payments owed by the pipelines. APGA is keenly interested because nearly all of its members pay a fully regulated, cost-based, maximum rates for natural gas pipeline services. The vast majority of APGA members are captive and have no chance of obtaining a discounted rate. As recourse rate shippers, they rely on the Commission to ensure that their rates are just and reasonable under the Natural Gas Act.

While the rate situation for each pipeline is unique, the public record thus far has supported APGA's initial estimate that the tax rate change by itself should lower pipeline firm transportation and storage rates in the range of 5-9%. Because the Commission has required new project sponsors to refile initial rates to account for the lower corporate tax rate, we can see that the impact of the tax rate change is substantial and in that range, even exceeding it at times.[1]

Accordingly, APGA strongly supports the Commission in its conclusion that an exception to the general policy of avoiding one-issue rate filings "is justified in order to permit interstate pipelines to voluntarily reduce their rates as soon as possible to reflect a reduction in a single cost component—their federal income tax costs—so as to flow through that benefit to consumers." NOPR P 44. APGA agrees that the best solution to this fundamental change of circumstances in our Nation's economic system is for pipelines to address it voluntarily in limited rate filings. See Proposed § 154.404(a). (In fact, any pipeline need not wait for this regulatory change to make such a filing.) This provides pipelines with the opportunity to be as competitive as possible with lower rates. Unfortunately, there has been not much if any evidence of that activity. It appears that only pipelines with pre-existing obligations to act have addressed the change in tax law to date.[2]

The Commission's proposal here is a referendum on the competition principles that were the foundation of Order No. 636 and the Commission's light-handed regulatory posture since. If pipelines are truly competitive, then they should move

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1 *See e.g., Florida Gas Transmission Company, LLC*, 163 FERC ¶ 61,017 at P 24 (2018) (tax change reduced initial incremental recourse reservation rate from $0.1061 to $0.0922/Dth for Phase 1 service or 13%).

2 *E.g.,* Southern Natural Gas Company, L.L.C., Docket No. RP18-556-000 (black box settlement filed March 12, 2018).

promptly to offer the lowest regulated rates possible to attract business. If, on the other hand, there is very limited competition and markets are bifurcated between competitive and captive markets (as APGA suspects), then pipelines will not make these voluntary filings. In that outcome, forceful rate regulation will be even more justified and pipeline claims that competition merits higher returns should fall on deaf ears at the Commission.

APGA members are optimistic that pipelines will "file the proposed FERC Form No. 501–G and simultaneously make a separate limited NGA section 4 filing, pursuant to proposed section 154.404, to reduce its reservation charges and any one-part rates that include fixed costs by the percentage reduction in its cost of service calculated in the FERC Form No. 501–G resulting from the reduced corporate income tax rates." NOPR P 42 (footnotes omitted). Therefore, APGA only offers a few comments intended to improve the Commission's final rule.

IV. COMMENTS

A. The Commission Should Clarify That a Limited Section 4 Rate Filing to Lower Rates May Be Made Prior to the Due Date for Form 501-G

In the NOPR, the Commission stated that "an interstate natural gas pipeline would file the proposed FERC Form No. 501–G and simultaneously make a separate limited NGA section 4 filing, pursuant to proposed section 154.404, to reduce its reservation charges and any one-part rates that include fixed costs by the percentage reduction in its cost of service calculated in the FERC Form No. 501–G resulting from the reduced corporate income tax rates provided by the Tax Cuts and Jobs Act and the elimination of MLP tax allowances by the Revised Policy Statement." NOPR P42 (footnotes omitted).

APGA believes that if an interstate natural gas pipeline made such a filing prior to the due date for its Form No. 501-G, it would be consistent with the Commission's policy proposed in the NOPR, if not the stated procedure, and lawful. There may be an administrative efficiency to the Commission's approach, but the Commission could accept any such early filing and lower rates sooner (establishing any appropriate procedures including the filing and review of the 501-G data). The Commission may so clarify in adopting the final rule.

B. The Commission Is Correct To Address Pass-Through Ownership Structures Immediately

The Commission has proposed that streamlined, limited rate filings may be made to address the Commission's new policy disallowing a tax allowance on flow through entities. See Proposed § 154.404(a)(2-3). APGA supports that proposal generally. APGA also supports the Commission's effort to have pipelines address this issue in establishing initial rates for new projects being certificated under NGA section 7.[3] Inasmuch as APGA believes that this policy change is long overdue, prompt action is in the public interest. And APGA would observe that the rule would be an appropriate response to pipelines that seek clarification in Docket No. PL17-1 to the effect that pipelines can demonstrate the applicability of the Commission's revised policy to their own situations.

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[3] *E.g* ,Data Request to Transcontinental Gas Pipe Line Company, LLC, Docket No. CP17-490-000 (issued Apr. 6, 2018).

As the proposed regulation is structured, however, if a flow-through pipeline entity files a written justification to preserve its tax allowance under Proposed § 154.404(a)(3(ii), Staff and intervenors may not be allowed to comment on that—or seek a hearing—under Proposed § 154.404(e). Potentially this tax issue could be addressed concerning whether or not "the correct information was used," Proposed § 154.404(e)(iii), but it would be preferable for the Commission to eliminate any confusion by adding a new subpart (iv) that states: "Whether any justification submitted pursuant to paragraph (a)(3)(ii) of this section is consistent with Commission policy and the public interest."

APGA further submits that proposed § 154.404(a)(3) is ambiguous because the upshot of *United Airlines* is that pass-through entities should not be entitled to an income tax allowance because they do not pay taxes. This is true of "partnerships," but it also is true of limited liability corporations. The Commission recognized this elsewhere in the NOPR preamble, stating: "In addition, consistent with the Revised Policy Statement, <u>partnerships or other pass-through entities</u> that have not adopted the MLP business form must address the double-recovery concern raised by *United Airlines*. To the extent any of these <u>partnerships or pass-through entities</u> argue that they should continue to recover an income tax allowance, then the entity's revised tax rate should reflect any relevant tax reductions resulting from the Tax Cuts and Jobs Act."

NOPR at n.43.[4] Accordingly, the Commission should amend proposed § 154.404(a)(3) to replace “partnership” with “partnership or other pass-through entity”.

C. The Commission Should Revise Its Proposed Regulation to Account for Non-SFV Rate Pipelines

Not all interstate natural gas pipelines employ a straight fixed-variable rate design where all fixed costs are collected through the reservation charge. Yet, Proposed § 154.404(c) permits the pipeline to reduce only its reservation rates. That proposal should be amended to allow the pipeline to revise usage rates as well if there are fixed costs collected in usage rates.

D. A Pipeline’s Treatment of ADIT Is An Issue On Which Ratepayers May Comment

Inasmuch as accounting for accumulated deferred income taxes (ADIT) is critical to the calculation of pipeline rates, 501-G filings should reflect the excess revenues attributable to the excess ADIT that is created by the reduction in tax rates. Ratepayers should be allowed to comment about this accounting treatment because the issue pertains to whether or not the pipeline employed “the correct information.” Proposed § 154.404(e)(iii). APGA also appreciates that these issues are involved in the Notice of Inquiry in Docket No. RM18-12, on which APGA will comment.

E. Pipelines Under Rate Moratoria Merit FERC Staff Scrutiny

The Commission reasons that most if not all pipeline rate settlements on file lack the explanatory support schedules to demonstrate the pipeline’s imputed tax allowance.

4 *See also* NOPR n.57 (“If a pass-through entity that is not an MLP claims an income tax allowance, it must reflect the corporate rate reduction and any other relevant tax reductions in the Tax Cuts and Jobs Act.”).

Absent that data, it would be possible to change the allowance only by making a number of assumptions about the rest of the pipeline's cost of service. For that reason, the Commission is inclined to let those "black-box" settlements stand during any rate moratoria, even though a reasonable person would conclude that the significant drop in the pipeline's tax expense represents a windfall not flowed through to ratepayers.[5]

It appears that the Commission has not exempted those pipelines with rates established under "black box" settlements from filing a Form 501-G, even if those settlements have a rate moratorium that is still in effect. See Proposed § 260-402(b)(ii). APGA strongly agrees with this approach, which is particularly required for those pipelines have no "come back" provision requiring a restatement of its rates at the end of the moratorium. Moreover, the Commission should be primed to perform a NGA section 5 investigation given the imputed excessive tax allowance baked into rates. And it would not be premature—given the current limitations on NGA section 5 allowing only prospective application—to commence an investigation prior to the end of any rate moratorium. In short, the Commission should not exclude pipelines under rate moratoria from their annual review of pipeline returns.

F. The Reason for Congress to Amend NGA Section 5 Has Never Been Clearer

APGA calls on the Commission to support in its final rule preamble congressional action to amend NGA Section 5 in a manner that if in effect today would speed rate relief to pipeline ratepayers by months if not years. As the Commission is well aware,

[5] Pipelines of course are at risk of increasing costs during a rate moratorium that may offset lower tax costs, but history shows that a pipeline manages to lower costs after a rate settlement. *See, e.g.,* https://blog.chron.com/newswatchenergy/2009/11/job-cuts-at-el-paso-start-today/

any rate relief that it orders as a result of its own investigation or the result of a complaint brought by a pipeline customer may take effect prospectively only. New rates are not effective as of a refund date as required under NGA section 4.

Consider the case of Transcontinental Gas Pipe Line Company, LLC. The proposed rule exempts from the one-time filing pipelines like Transco that have an obligation to file a NGA section 4 rate case. Transco must file no later than August 31, 2018.[6] Assuming the routine and full suspension period, Transco's new rates will become effective subject to refund on March 1, 2019—thirteen months after the effectiveness of the federal income tax rate reduction. *And this is in the early portion of the time window in which pipeline rates will change as a result of this NOPR becoming a final rule.* For recalcitrant pipelines that take no action on rates but are demonstrably overearning their allowed rate of return because of the tax cut, the Commission must commence NGA Section 5 proceedings.[7] Even if commenced in 2018, there is no certainty nor likelihood that they will conclude in 2019. Thus, two or more years would go by before rates are changed to reflect the tax cut effective January 1, 2018.

On the other hand, if today NGA section 5 read like its sister provision, Section 206 of the Federal Power Act, the Commission could have already established a refund date for all pipelines to adjust their rates to account for the tax change. The Tax Act has made the public need for NGA section 5 reform as clear as day.

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[6] Response to Data Request of Transcontinental Gas Pipe Line Company, LLC, Docket No. CP17-490-000 at p. 3 (filed Apr. 17, 2018).

[7] See NOPR P 24 ("take targeted actions under NGA section 5 where necessary to achieve just and reasonable rates").

V. CONCLUSION

APGA supports the NOPR and respectfully requests that the Commission consider its suggestions to improve the final rule. APGA urges the Commission to act promptly so that ratepayers may benefit from the Tax Act that became effective on January 1, 2018.

Respectfully submitted,

AMERICAN PUBLIC GAS ASSOCIATION

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