



Donald F. Santa, Jr.
President

April 2, 2009

The Honorable Jeff Bingaman
Chairman
Energy and Natural Resources Committee
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The members of the Interstate Natural Gas Association of America (INGAA) request that you oppose the amendment to section 5 of the Natural Gas Act (NGA) that has been proposed as part of S. 672, the Natural Gas and Electricity Review and Enforcement Act. While proponents of the amendment frame the issue simply as achieving parity with section 206 of the Federal Power Act (FPA), the issue is much more complex. The issues raised by the amendment, in fact, go to the core of the relationship between the regulatory framework for natural gas pipeline regulation, the ability to raise private capital for expanding that infrastructure, and the importance of such investment to the economic, energy and environmental policy goals that are a central focus of the new Administration and the Congress.

Already this decade, interstate natural gas pipeline companies have invested over \$51 billion dollars to maintain and expand the world's most reliable natural gas transportation system, including the construction of over 10,800 miles of new, high capacity interstate pipelines. These investments stimulate the economy by producing thousands of high paying construction jobs, as well as a continuing source of state and local tax revenue and a robust energy delivery network that lowers the total price of energy for consumers. In order to finance the billions of dollars of materials and construction costs associated with this new pipeline infrastructure, pipeline companies must raise capital in the marketplace. Investors consider not only the anticipated new project revenues, but also the revenues of the company's existing assets. Regulatory uncertainty about those revenue streams will significantly affect the ability to raise the required capital. In today's difficult economic climate, our industry is not requesting federal outlays to construct new natural gas infrastructure. Instead, all we ask is that the Congress not make it more difficult for existing companies to raise private capital for new pipelines by amending the 70 year old statutory framework that has served the Nation well.

The argument that this matter should be decided on the basis of achieving parity with FPA section 206 implies that: (1) the electricity and natural gas industries are roughly parallel; (2) the same potential for rate fluctuations and abuse exist for natural gas transportation as exist for

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electricity; and (3) the FPA is a successful model for developing and regulating energy infrastructure and therefore should be emulated in natural gas regulation. INGAA respectfully takes issue with these assumptions.

There are significant, material differences between the NGA and FPA, largely because the electricity and natural gas industries have developed very differently over the last 70 years. Only natural gas transportation and storage services now are regulated under the NGA; Congress decontrolled wellhead sales of natural gas 20 years ago. Furthermore, because pipelines no longer are in the business of buying and selling natural gas, pipeline rates reflect only the cost of transporting natural gas. On the power side, however, FPA jurisdiction still extends to wholesale sales of electricity in interstate commerce as well as the rates charged for electric transmission in interstate commerce.

The refund authority added to the FPA in 1988, and amended in 2005, was in direct response to complaints about the prices charged for wholesale sales of electricity. The Federal Energy Regulatory Commission (FERC) commonly grants market-based rate authority to electric utilities selling power at wholesale, which means that such rates can increase dramatically and fluctuate greatly due to market volatility. FERC-jurisdictional natural gas pipelines have not been granted such market-based rate authority for pipeline transportation services. In contrast with the experience in wholesale power markets during the 2000/2001 Western electricity crisis, natural gas pipeline transportation rates remain cost-based, do not fluctuate with market conditions, and must be approved by FERC on a case-by-case basis.

The real question for the Congress is whether adopting the FPA retroactive refund model for natural gas really will improve consumer welfare, or whether it will slow the development of energy infrastructure that will bring new, competitive natural gas supplies to the market and ultimately benefit consumers and the economy. The share of the total delivered cost of natural gas attributable to interstate transportation is low – typically only about 10 percent of the total cost. Any reduction in pipeline transportation rates as a result of more frequent pipeline rate complaints would represent only a small portion of the total natural gas bill paid by consumers. The largest portion of the consumer bill is the unregulated cost of the natural gas itself, which would be unaffected by the results of a complaint against an interstate pipeline.

While the overall cost of pipeline transportation is low, bottlenecks in the delivery system can significantly affect natural gas prices and volatility. This is why infrastructure development is so important. Interstate natural gas pipelines are by their very nature capital-intensive projects. Investors depend on rate certainty to recoup their investment. Retroactive section 5 refund authority would diminish that investment certainty and make it more difficult to raise capital for new construction merely for the sake of mirroring the FPA and with no compensating benefit.

The natural gas regulatory model encourages the construction of new infrastructure that ultimately puts downward pressure on the commodity price to the benefit of consumers and the economy. A growing number of energy experts advocate using the NGA as a model for reforming the FPA to facilitate expansion of the electric transmission grid. It is easy to see why. According to FERC, approximately 1000 miles of high-voltage electric transmission have been built in the U.S. since 2000. As noted earlier, over 10,800 miles of natural gas transmission

pipeline have been constructed during that same period. The practical experience of the natural gas and electricity industries under these two statutes should guide the Congress as it decides where most productively to focus its efforts in improving the statutory framework for energy regulation.

Mr. Chairman, on two occasions in the past, you voted against amendments offered in the Senate to amend NGA section along the lines now proposed in S. 672. The arguments that prevailed in those debates are just as compelling today.

The Energy and Natural Resources Committee has compiled virtually no record on the merits of whether to amend this fundamental part of the framework for natural gas pipeline regulation that has remained in the law for 70 years and that the Congress on multiple occasions has declined to amend. Other than a passing reference in the chair's opening statement, the March 25, 2009, hearing before the Subcommittee on Energy included no testimony and no discussion on the proposed amendment to section 5 of the NGA.

The natural gas model of regulation embodied in the NGA is not broken. Mr. Chairman, rather than approaching you and other policymakers with a request for federal outlays to construct new natural gas infrastructure, our request to the Congress is simple and without cost – do no harm. The current regulatory system for natural gas pipelines works well. We hope you will agree that upsetting the regulatory balance in these uncertain times by amending NGA section 5 would be a serious mistake.

Finally, INGAA also is concerned with the portions of S. 672 that would grant FERC new authority to issue cease and desist orders and freeze assets on its own motion. While not the topic of this letter to you, we hope to work with you and your staff on that significant proposal, as well.

Respectfully,

A handwritten signature in blue ink, appearing to read "D. F. Santa, Jr.", with a stylized flourish at the end.

Donald F. Santa, Jr.