

Resolution Supporting Federal Legislation to Fully Refund Interstate Pipeline Customers

Whereas the Natural Gas Act (“NGA”), 15 U.S.C. §§ 717-717w establishes the Federal Energy Regulatory Commission’s (“FERC”) authority to regulate the rates, terms, and conditions for the transport of natural gas interstate commerce;

Whereas Sections 4 and 5 of the NGA describe the regulatory power FERC has over rates;

Whereas specifically, Section 4 of the NGA (15 U.S.C. § 717c) addresses requests by natural gas companies (i.e., those engaged in the transportation of natural gas in interstate commerce or the sale in interstate commerce of such gas for resale) for new or revised rates;

Whereas FERC’s authority to order rate refunds is covered in part by subsection 717c(e), which gives FERC the authority to hold hearings concerning new rate schedules filed by a natural gas company;

Whereas importantly, subsection (e) appears to limit FERC’s authority to order a refund to filings for *increased rates* that took effect after a five-month suspension period pending Commission review. That is, if a rate increase goes into effect because FERC did not complete its review within five months of the proposed effective date, and if the rate is subsequently found to be unlawful, a refund can be ordered. In the case where FERC finds that even the *pre-existing* rate is unlawful (or higher than just and reasonable), it can order a refund, but the refund is limited to the difference between the proposed rate and the pre-existing rate;

Whereas one must look to Section 5 to address this situation. Section 5 of the NGA (15 U.S.C. §717d) addresses rate investigations on existing pipeline rates initiated by FERC and pipeline complaints filed with FERC by interested parties. Under Section 5, FERC can order a decrease in rates if existing rates are unjust, unduly discriminatory, etc., but cannot order refunds of overcharges accumulated up until the time FERC establishes the new, lower rate. Rather, the new, lower rate takes effect on a prospective basis even if the existing rate has been deemed unjust and unreasonable and even though the pipeline had notice that FERC was investigating the continuing justness and reasonableness of the existing rate;

Whereas as it stands now, the NGA may not give FERC appropriate discretionary authority to allow sufficient legal recourse for full refunds when FERC determines that interstate pipelines have overcharged for service;

Whereas currently, pipeline consumers (e.g., direct consumers, natural gas shippers, and State utilities), as well as State commissions, do petition FERC to change rates if they believe they are “unjust and unreasonable”;

Whereas concerns have arisen about both the inability for FERC under Section 5 of the NGA when appropriate to order pipelines to refund to customers the full amount they were overcharged during the period of FERC’s review, and the often-protracted Section 5 review process;

Whereas even where a customer or State commission bears the burden of challenging an existing rate through a Section 5 complain, pipelines can effectively terminate a Section 5 investigation at any time prior to decision by seeking a rate increase under Section 4, establishing the challenged pre-existing rates as the “refund floor” and rendering moot the Section 5 rate review. Thus, the current law in practice often discourages customers from incurring the expense of petitioning FERC to change rates;

Whereas the NGA appears not to incentivize interstate pipelines to more fairly and expeditiously resolve these FERC rate proceedings since as long as the FERC proceedings continue, the existing rate (even if excessive) continues. Therefore, the bargaining power balance in any settlement may not be on the side of the consumers;

Whereas this NGA rate disparity does not appear to be similarly occurring in the electricity sector. Congress amended the Federal Power Act in 1988 and 2005 to “fix” for consumers of electricity similar consumer rights and refund issues. Thus, a legislative “fix” may be helpful under the NGA so there is rate parity for consumers of natural gas and electricity;

Whereas any “fix” obtained must not harm consumers, and that can include shippers and utility companies that then have to pass costs on to individual customers;

Whereas it is important to allow FERC such flexible discretionary authority under the NGA to determine the appropriate rate refund relief that is fair to all;

Whereas specifically, FERC should have more flexibility in its authority under NGA to, if proper and after due diligence review, allow for appropriate retroactive refund rates when these rates have been determined to be higher than just and reasonable. This would align with FERC’s authority under the Federal Power Act, which permits FERC to order retroactive refunds to electric transmission customers in similar cases;

Whereas such changes ensure flexibility to get customers the best refund possible and to showcase strong support in fairly protecting consumers’ interest; *now, therefore be it*

Resolved that the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2020 Winter Policy Summit in Washington, DC, supports federal legislation to, reform the procedural and substantive provisions of the Natural Gas Act to allow for meaningful and timely opportunities to achieve appropriate relief from unjust and unreasonable rates and to allow FERC the discretionary authority to order, when appropriate, full and complete refunds of unjust and unreasonable compensation, and to do so in a way that fairly benefits consumers.

Sponsored by the Committee on Gas

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