UNITED STATES OF AMERICA
BEFORE THE
FEDERAL TRADE COMMISSION

Comments Regarding Retail Energy Competition	))	**FTC File No. V010003**

COMMENTS OF THE PROCESS GAS CONSUMERS GROUP

Pursuant to the February 28, 2001 "Notice Requesting Comments on Retail Electricity Competition Plans" issued by the Federal Trade Commission in File No. V010003, the Process Gas Consumers Group hereby respectfully submits comments on certain issues raised in the Notice.

I. Statement of Interest

The Process Gas Consumers Group ("PGC") [1] is an association of industrial consumers of natural gas, organized to promote the development and adoption of coordinated, rational, and consistent federal and state policies with respect to gas service to industrial gas users. PGC members own and operate hundreds of plants in nearly all states in the nation.

For over twenty years, PGC has strongly supported federal actions to promote more competitive conditions in the natural gas industry, to enable markets to evolve, and to permit consumers greater choice among sellers of the natural gas commodity and of open access, nondiscriminatory interstate transportation services for their natural gas. Many PGC members also are extensive users of electricity in their plant operations and are vitally interested in seeing the benefits of competition brought to the electric industry.

II. Comments

PGC's comments are directed to the FTC's request in "Other Issues", Item 7, which asks, *inter alia*, for lessons or insights learned from other formerly-regulated industries in the U.S. that allow customer choice and provide useful comparisons. In particular, PGC believes that certain actions taken by Federal regulators and the Congress have been instrumental in promoting more competitive conditions in the natural gas industry and should be noted in considering means to encourage retail competition in the electric industry.

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[1] The following companies are members of PGC: Alcan Aluminum Corporation, Alcoa Inc., Bethlehem Steel Corporation, Carpenter Technology Corporation, Corning Incorporated, Eaton Corporation, Farmland Industries, Inc., Ford Motor Company, General Motors Corporation, Grain Processing Corporation, Owens-Corning, PCS Nitrogen, Inc., PPG Industries, Inc., The Procter & Gamble Company, and The Timken Company.

A. Background

When Congress enacted the Natural Gas Act ("NGA") in 1938, the natural gas industry afforded consumers few choices. Both the interstate transportation of natural gas and the receipt of that gas locally largely were controlled by monopolies, respectively, the interstate pipeline companies and local distribution companies. Consumers rarely could secure natural gas directly from a producer or supplier of choice; rather, they generally were obligated to buy their gas delivered through whatever route and from whatever pipeline or LDC companies served an area.

Over the past decades, however, and particularly in the past twenty-five years, active Congressional and regulatory involvement have helped transform the natural gas industry into a far more market-driven and competitive mode – one in which consumers have far greater choice among suppliers of natural gas and of transportation services, and more control over the prices of those choices. In the case of industrial consumers, who comprise the largest single natural gas consuming sector,[2] critical factors in the success have been (1) the Federal Energy Regulatory Commission's ("FERC") exclusive statutory[3] authority over interstate transportation of natural gas, enabling it to undertake pro-competitive regulatory initiatives to create an open access interstate natural gas grid, to enhance conditions for buyers and seller to come together, and to lessen interstate pipeline monopoly power, and (2) Congress' decontrol of natural gas commodity prices and encouragement of transportation services to integrate interstate and intrastate markets.

While the natural gas industry is not yet, in PGC's view, so workably competitive that market-based regulation completely can supplant continued rate and service regulation of interstate transportation, many of the actions taken to move the natural gas industry towards a competitive mode are worth noting and replicating for electricity.

B. Actions Supporting Competition in the Natural Gas Industry

Many lessons have been learned in the move toward competition in the natural gas industry. That industry remains regulated as to interstate transportation services (by FERC) and local distribution (by States' utility regulators). However, PGC believes that the following actions have been instrumental in bringing more competitive conditions to the industry and competitive choice to retail industrial consumers of natural gas.

1. Congress' Decontrol of Wellhead Prices for Natural Gas

The decontrol of natural gas wellhead prices[4] both removed from natural gas markets government-imposed pricing that distorted production incentives and freed producers and consumers to contract more freely for gas supplies.

[2] Energy Information Administration, "Natural Gas Monthly," Feb. 2001, Table 3, Natural Gas Consumption in the United States, 1995-2001.
[3] Pursuant to the Natural Gas Act, 15 U.S.C. §§ 717-717w (1994).
[4] Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301-3432 (1994); Natural Gas Wellhead Decontrol Act of 1989, Pub. L. No. 101-60, 103 Stat. 157 (1989).

2. Congress' Actions to Encourage Transportation Options

Hand in hand with decontrol of wellhead gas prices, Congress enacted new transportation options[5] that encouraged pipelines to offer transportation-only options for certain shippers' gas secured elsewhere, and, thus, began to allow shippers more control over gas supplier decisions and delivery options.

3. FERC's Exercise of NGA Authority over Interstate Transportation

Throughout the more than 60 years since enactment of the NGA, it has been clear that FERC (and its predecessor agency, the Federal Power Commission) has exclusive authority over the interstate transportation of natural gas, the "natural gas companies" that provide that transportation, and over the construction and operation of facilities for interstate transportation. FERC's clear line of authority over interstate transportation and the companies and facilities that accomplish that transportation, including in the case of direct connects (see below), has permitted it to enforce more competitive options through regulation and to prevent LDCs and states from imposing conflicting regulation that would balkanize the interstate grid with protectionist and conflicting regulation. FERC's strong grant of authority over interstate transportation is perhaps the single most critical factor in the evolution of the gas industry.

a. Mandating open access transportation

FERC's Order No. 636[6] required interstate pipelines to provide nondiscriminatory open access transportation services to shippers regardless of the source of their gas supplies, completing the process begun on an optional basis in Order No. 436.[7] By

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[5] Natural Gas Policy Act of 1978, Section 311, 15 U.S.C. § 3371 (1994).

[6] Order No. 636, *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, and Regulation of Natural Gas Pipelines After Wellhead Decontrol,* FERC Stats. & Regs., Regs. Preambles 1991-1996, ¶ 30,939, *order on reh'g,* Order No. 636-A, FERC Stats. & Regs., Regs. Preambles 1991-1996, ¶ 30,950, *order on reh'g,* Order No. 636-B, 61 FERC ¶ 61,272 (1992), *aff'd in part and remanded in part, United Distribution Cos. v. FERC,* 88 F.3d 1105 (D.C. Cir. 1996), *cert. denied,* 117 S. Ct. 1723 (1997), *order on remand,* Order No. 636-C, 78 FERC ¶ 61,186 (1997), *order on reh'g,* Order No. 636-D, 83 FERC ¶ 61,210 (1998*), appeal docketed sub nom., Interstate Natural Gas Association of America v. FERC,* No. 98-1333 (D.C. Cir. July 22, 1998).

[7] Order No. 436, *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, FERC Stats. & Regs., Regs. Preambles 1982-1985 ¶ 30,665, *order on reh'g*, Order No. 436-A, FERC Stats. & Regs., Regs. Preambles 1982-1985 ¶ 30,675 (1985), *order on reh'g*, Order No. 436-B, FERC Stats. & Regs., Regs. Preambles 1986-1990 ¶ 30,688, *order on reh'g,* Order No. 436-C, 34 FERC ¶ 61,404, *order on reh'g*, Order No. 436-D, 34 FERC ¶ 61,405, *order on reh'g*, Order No. 436-E, 34 FERC ¶ 61,403 (1986), *vacated and remanded sub nom., Associated Gas Distributors v. FERC,* 824 F.2d 981 (D.C. Cir. 1987), *cert. denied,* 485 U.S. 1006 (1988), *readopted,* Order No. 500-H, FERC Stats. & Regs., Regs. Preambles 1986-1990 ¶ 30,867

ensuring that pipelines controlling transportation capacity sell that capacity in a not unduly discriminatory manner to all potential shippers, including those that purchased their gas from third parties, FERC boosted competition in the industry because consumers now could reasonably access the transport capacity to get selected gas to their markets.

b. Approving direct connects for consumers

FERC's interstate transportation jurisdiction and authority over construction of interstate facilities has been exercised very successfully to enable some industrial consumers, power plants and other entities to secure a direct connection to an interstate pipeline. These direct connects afford critically important competitive retail options to traditional service through an LDC, allow consumers to elect among choices for the most economically efficient and most reliable gas service options, and have introduced greater competition between the transportation and other gas options of pipelines and LDCs. In particular, FERC's adoption of a procompetitive stance regarding the right of shippers to seek the interstate arrangements that best suit their natural gas needs – and thus endorsing direct connects to interstate pipelines so long as there is no evidence of anticompetitive or discriminatory behavior - has given industrial consumers substantially greater opportunity for cost control and access to the gas suppliers and transportation services desired for their facilities. Federal appellate courts consistently have upheld FERC's preemptive authority over interstate transportation and the approval of facilities for that transportation,[8] and these authorities have been instrumental in inducing often-unwilling monopolies to improve their competitive service and rate offerings.

c. Requiring that pipelines exit the merchant function

FERC's Order No. 636 took a very major step towards competitive interstate markets by requiring that interstate pipelines separate (unbundle) their transportation of natural gas from the sale of gas and, as a practical matter, exit the merchant (gas sale) function. These changes created more of a common carrier environment for regulation of interstate pipeline transportation and substantially diminished pipelines' opportunities to interfere with the transportation of competitors' gas. Moreover, these steps finally created a national pipeline grid for transportation-only shippers, dramatically enhancing the opportunity for buyers to access gas sellers and to achieve the service reliability and financial rewards of competition among transporters and varied gas sellers.

(1989), *order on reh'g,* Order No. 500-I, FERC Stats. & Regs., Regs. Preambles 1986-1990 ¶ 30,880 (1990), *aff'd in part and remanded in part, American Gas Association v. FERC,* 912 F.2d 1496 (D.C. Cir. 1990), *cert. denied,* 498 U.S. 1084 (1991). Order No. 436 encouraged, but did not require, a pipeline to adopt open access services.

[8] *See, e.g., Michigan Consol. Gas Co. v. Panhandle Eastern Pipe Line Co.,* 887 F.2d 1295 (6th Cir. 1989), *cert. denied,* 494 U.S. 1079 (1990); *Michigan Consol. Gas Co. v. FERC,* 883 F.2d 117 (D.C. Cir. 1989); *Cascade Natural Gas Corp. v. FERC,* 955 F.2d 1412 (10th Cir. 1992).

d. Bringing capacity options and comparability to the interstate transportation grid

Order No. 636 also forged creation of a competitive interstate grid by requiring that interstate pipelines provide certain nondiscriminatory transportation services, remove many tariff barriers to providing services to consumers, and otherwise open up their services to more shippers so that buyers and sellers of natural gas could transact business more freely. In addition, FERC created a successful program of capacity release that allowed pipeline capacity-holders to release their unneeded capacity to other shippers, thus creating a secondary market that could compete with the interstate pipelines' own sale of firm and interruptible transportation services. Further, FERC granted shippers rights to flexible receipt and delivery points, which enable shippers to maximize the value of their capacity and move more readily past pipeline and LDC bottlenecks. As a result of these changes, many more entrants now transport and/or sell gas, shippers have far more plentiful and varied options from which to choose to structure their desired natural gas arrangements, new entities (particularly marketers) now play a vital role as alternatives to traditional utility service providers, and market hubs have emerged to provide locational alternatives to traditional pipeline routes for buyers and sellers. In particular, since Order No. 636, the gas industry has seen a sufficiently competitive and comparable transportation grid to support the emergence of commodities instruments that afford price risk management, gas market transparency, and increasing comparison among transportation (basis) options.

e. Discouraging affiliate bias, tying and other anti-competitive actions

To prevent the marketing affiliates of interstate natural gas pipeline companies from receiving favored access to capacity, rates or important market-related information, FERC has adopted regulations that require arms-length transactions and no preference between pipelines and their marketing affiliates, as well as posting of certain information to make those transactions more transparent.[9] FERC continues to review pipeline affiliate issues and to consider whether other actions are necessary more effectively to preclude affiliate preference and to ensure that its policies keep pace with the rapidly changing gas industry.[10]

f. Encouraging transparent and technologically timely markets

FERC greatly has enlarged the set of information that consumers may access about interstate pipeline capacity, programs, rates, and transactions,[11] as well as consumer ease of access to that information at increasingly interactive Internet websites. Shippers can see and choose among various sellers of released and pipeline capacity, rates for various services and the terms of doing business on various competitors, as well as transactions entered into by the

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[9] 18 C.F.R. Part 161; 18 C.F.R. §§ 250.16, 284.13 (2000).

[10] *Dialog Concerning Natural Gas Transportation Policies Needed to Facilitate Development of Competitive Natural Gas Markets,* "Notice Organizing Staff Conference On Competitive Natural Gas Markets," Docket No. PL00-1-000 (March 2, 2001).

[11] 18 C.F.R. § 284.13 (2000).

pipeline and its shippers. This access is still a work in progress,[12] but it should lead to consumer ability to make more reasoned and economically-rational decisions among competitors and should prevent anticompetitive "secret" deals. Further, FERC has revised its regulations to encourage more timely and consistent provisions for accomplishing deals.[13] Finally, many private companies now serve as interactive meeting places to facilitate and accomplish deals between buyers and sellers of natural gas and gas services.[14]

g. Facilitating the growth of the interstate grid

In addition to other regulatory initiatives, FERC recently streamlined its regulations and policies governing the approval of interstate pipeline facility proposals. While PGC believes that substantial additional pipeline infrastructure will be needed to support the projected growth in demand for natural gas, FERC has put in place policies that facilitate construction where the pipeline and the affected beneficiaries are willing to assume the risk for the facilities,[15] as well as revised procedures to guide the filing and review of projects at FERC.[16] Growth in the interstate grid allowing more areas to be served by adequate capacity and more than one pipeline has been critical in enabling more shippers to have competitive choices. Continued infrastructure growth will be essential to future competition in both the gas and electricity markets.

III. Conclusion

A strong grant of federal statutory authority over interstate transportation, decontrol of wellhead natural gas prices, and creative FERC regulation to foster competition among a much broader array of sellers of gas and gas services have dramatically improved retail choices for industrial gas users. In particular, the ability to elect service directly from the interstate pipeline, and the opportunity to secure transportation-only interstate services have profoundly improved the ability of PGC members to control the costs for their natural gas supplies and to shape desired natural gas arrangements from among a wider array of competitive options. Similar provisions would assist in the evolution of the retail electric markets for industrials and other consumers.

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[12] Order No. 637, issued February 9, 2000, requires greater information, but some of those requirements apply only to prospective transactions and so are not fully in place for all business on the pipelines.

[13] 18 C.F.R. § 284.12(c)(1)(ii) (2000).

[14] Such companies include, for example, Energy Gateway and Enron Online.

[15] *Certification of New Interstate Natural Gas Pipeline Facilities,* 88 FERC ¶ 61,227 (1999), *order on clarification,* 90 FERC ¶ 61,128, *order on clarification,* 92 FERC ¶ 61,094 (2000).

[16] *Revision Of Existing Regulations Under Part 157 and Related Sections of the Commission's Regulations Under the Natural Gas Act,* III FERC Stats. & Regs., Regs. Preambles ¶ 31,073, *order on reh'g,* III FERC Stats. & Regs., Regs. Preambles ¶ 31,081 (1999), *order on reh'g,* III FERC Stats. & Regs., Regs. Preambles ¶ 31,094 (1999).

Therefore, the Process Gas Consumers Group urges the FTC to consider and incorporate into its assessment of the status of retail electric competition, lessons learned in the evolution towards competition of the natural gas industry, as discussed above.

Respectfully submitted,

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