

# REGULATION OF THE GAS INDUSTRY

Edited by American Gas Association

Matthew Bender & Co. 1981

Four Volumes; 2500 pages

Reviewed by

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*“Les Must”*<sup>1</sup> is a phrase one would like to apply to REGULATION OF THE GAS INDUSTRY.<sup>2</sup> However, after reviewing and using this new four volume treatise on the regulation of natural gas pipelines and public utilities, it is concluded that “Les Must” is applicable only to the well researched, written, and indexed Volumes I and II. The remaining two volumes, predominantly a compilation of statutes and regulations, provide little new or unique information, with the exception of a “Glossary for the Gas Industry,” which may be of significance to an energy law practitioner or consultant. On balance, however, REGULATION OF THE GAS INDUSTRY is of value and can become important if the reserved chapters are completed and the existing materials are updated at a level consistent with the scholarship and expertise of Volumes I and II.

## VOLUME I

The first six chapters of Volume I trace the evolution of the natural gas industry from its beginnings in classical Greece and seventh century Japan, to the latter part of the twentieth century. Chapter 1 (“Beginnings of the Gas Industry”) reviews the growth of natural gas as a fuel, and Chapter 2 (“Initial Phases of Regulation”) succinctly summarizes Congress’ early forays into the regulation of natural gas and other industries. These early chapters are well stocked with industry anecdotes and quotations as well as useful legal citations.

Chapter 4, “Regulation in the Post World-War II Period,” is an important chapter focusing in part on the Natural Gas Act. The author deals with this vast subject knowledgeably and thoroughly, offering references to many of the important cases in this area. Regretably, the chapter’s citations are sometimes found within the text and at other times are dropped to the bottom of the page. Despite this minor defect, Chapter 4 provides a lucid exposition of such subjects as “original cost,” the *Mobile-Sierra* doctrine, and the *Atlantic Seaboard* formula. The second half of Chapter 4 is devoted to

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<sup>1</sup>*“Les Must”* is a registered trademark of Cartier Inc.

<sup>2</sup>REGULATION OF THE GAS INDUSTRY, is edited by the Legal Section of the American Gas Association with the assistance of an advisory board comprising several former members of the Federal Power Commission, former chairmen of the Wisconsin and New York Public Service Commissions, and the present administrative director and general counsel of the National Association of Regulatory Utility Commissioners. The 64 authors and contributors listed in the preface include a number of attorneys with significant expertise in the natural gas regulatory area, as well as representatives of several of the major natural gas pipelines and utilities.

state regulation of gas utilities since 1946. This section is useful for its data on natural gas utility sales and rates.

Chapter 5 describes the 1970's as "a turbulent as well as a momentous decade"<sup>3</sup> for the natural gas industry. The authors frame the events of the late 70's by describing the gas shortages and resulting curtailment proceedings. Chapter 5 discusses significant changes in pipeline ratemaking, including purchased gas adjustment clauses, liberalized depreciation for pipelines, new settlement procedures, and increases in the rates of return permitted for pipeline companies. This comprehensive chapter also outlines the various responses to the gas shortages of the 1970's, such as increased use of synthetic natural gas, liquified natural gas, and gas imports. Chapter 5 concludes with a description of the Department of Energy Organization Act and the National Energy Act of 1978.

Chapter 6<sup>4</sup> examines the future of the gas industry and concludes that even with the price incentives of the NGPA and with decontrol around the corner, conventional natural gas supplies in the lower forty-eight states will decline from annual current levels of 19 Tcf to about 14 Tcf by the year 2000.<sup>5</sup> At the same time, demand for gas will increase to 233 Tcf per year, leaving a shortfall of 9-19 Tcf per year. This gap will be filled by supplemental and unconventional gas supplies only if government and industry can work together to "reduce the attitudinal, legal, financial, marketing, and regulatory barriers to the development of gas energy."<sup>6</sup>

Chapter 10, which deals with pipeline organization, does a remarkable job in describing virtually all of the regulatory requirements faced by natural gas pipelines from the construction stage through operation. Of particular interest is Section 10.33, which sets forth the numerous Federal permit requirement imposed upon pipelines.

Chapter 11 covers "Pipeline Service Obligations." Most of this chapter is devoted to explaining Natural Gas Act requirements. Chapter 11 also covers the Natural Gas Policy Act's Title IV curtailment provisions. Chapter 12 describes conventional gas supply arrangements, imports, and non-conventional gas sources as a significant part of the gas industry's future. Chapter 12 addresses many of the technical, contractual, and property aspects of gas supply and storage. An appendix to this chapter provides a sample gas purchase contract.

Chapter 15, "Distributor Organization," Chapter 16, "Distribution Service Obligations," and Chapter 17, "Distributor Gas Supply," parallel Chapters 10-12. These later chapters cover the legal, economic, and technical aspects of gas distribution and also provide sample service agreements illustrating typical terms and conditions between gas pipelines and their customers.

The topic of wellhead regulation is covered in Chapter 20. This chapter presents a thorough review of wellhead price regulation, from the "Precursors

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<sup>3</sup>*Id.* at §5.01.

<sup>4</sup>An adaptation of Chapter 6 was published previously, Muchow, *The Future of Gas Energy*, 2 Energy L.J. 241 (1981).

<sup>5</sup>REGULATION OF THE GAS INDUSTRY at §6.06[2].

<sup>6</sup>*Id.* at §6.10.

of *Phillips*," to the Natural Gas Policy Act. Chapter 20 is significant for its detailed analysis of the Commission's jurisdiction under the Natural Gas Act.

## VOLUME II

Volume II of REGULATION OF THE GAS INDUSTRY is organized into four divisions covering discrete areas of rate regulation. The first of these divisions encompasses eight chapters and focuses on the economic aspects of regulation of the gas industry. Chapter 25, "General Principles Applicable to Utility Rates," summarizes the development of "economic-regulatory principles over the years." Chapters 26 through 32 consider in detail the various elements used in calculating cost of service. Chapter 30, which provides a detailed treatment of the various methodologies used in determining a proper rate of return, is one of the most significant and thoughtful chapters in this treatise.

The second division of Volume II is devoted to pipeline rates, tariffs, and schedules. Although containing certain ratemaking information already provided elsewhere, Chapter 35, entitled "Pipeline Rates," covers in a lucid and straightforward manner pipeline rate design, tariff requirements, and incremental pricing. Chapter 36, "Procedures in Pipeline Ratemaking," concisely and accurately describes procedures used by the Federal Energy Regulatory Commission with respect to rate hearings and administration. An important topic discussed in Chapter 36 is the use of the settlement conference.

The third division of Volume II deals with distributor rates, tariffs, and schedules. Chapter 40, which addresses the topic of distributor rates, provides an economic and legal overview of regulation of the retail end of the gas industry. The next chapter details ratemaking procedures, from initial rate change filings through appellate review. An appendix to Chapter 41 contains references to state statutes and regulations governing gas distributor ratemaking procedures. Chapter 42 completes this division with its separate treatment of "Rates and Service Obligations of Municipally Owned Gas Distributors."

The fourth division provides a summary of the administrative and judicial procedures applicable to federal regulation of the natural gas industry. Part A of Chapter 45 covers administrative adjudicatory procedures, not only before the Federal Energy Regulatory Commission and its predecessor, the Federal Power Commission, but also before the Department of Energy, the Department of Transportation, and the Department of the Interior. Part B deals with federal rulemaking and, to a lesser extent, with judicial review of rulemaking. Part C provides an overview of the functions and procedures of state public utility commissions.

Chapter 46, entitled "Judicial Review," sets out the legal and procedural hurdles involved in obtaining judicial review of federal and state agency decisions. In covering such complex legal topics as standing, ripeness, and the substantial evidence standard, the authors do a review of sufficient depth and legal specificity to be useful to the practicing attorney.

It is not clear why the next three chapters are included in a division entitled "Administrative and Judicial Review," but Chapter 47, "Regulatory Treatment of Nonutility Functions," Chapter 48, "Regulatory Treatment of Specialized Accounting Problems," and Chapter 49, "Reporting Requirements," provide information on how the gas industry operates. Chapter 49 also contains a useful Appendix detailing reports filed with federal and state agencies by gas pipelines and distributors.

#### *VOLUMES III & IV*

As already indicated, Volumes III and IV provide a mixture of information that is more-or-less relevant. Of particular value are the American Gas Association's "Glossary for the Gas Industry" and, secondarily, the reprints of the major statutes and regulations affecting the gas industry. Of lesser value are the lists of the names, addresses, and telephone numbers of all state utility and energy offices.

In sum, the distinguished authors and editors of **REGULATION OF THE GAS INDUSTRY** should be recognized for their important effort. Much of Volumes I and II will become, with updating, a significant source of information and, most importantly, good counsel.