[Tulsa Law Review](https://digitalcommons.law.utulsa.edu/tlr)

Volume 23
Number 4 *Mineral Law Symposium*

Volume 23 | Number 4

Summer 1988

Prospective Remedies under Section 5 of the Natural Gas Act: Office of Consumers' Counsel v. FERC

Laurie L. Largent

NOTES AND COMMENTS

PROSPECTIVE REMEDIES UNDER SECTION 5 OF THE NATURAL GAS ACT: *OFFICE OF CONSUMERS' COUNSEL v. FERC*

I. INTRODUCTION

Section 5 of the Natural Gas Act (NGA)[1] protects consumers from excessive rates and charges in gas purchase contracts.[2] Section 5[3] permits the Federal Energy Regulatory Commission (the FERC), on its own motion or upon a third party complaint, to hold a hearing to determine whether rates, classifications, rules, regulations, practices, or contracts relating to jurisdictional transactions are unjust, unreasonable, unduly discriminatory, or preferential.[4] If the FERC finds a violation, it orders a change to the lowest reasonable rate or to a just rate.[5] The court's goal in providing a remedy under section 5 is to place the affected party in the same position it would have occupied had the violation not occurred.[6]

Although the FERC has traditionally ordered only prospective remedies upon finding a section 5 violation,[7] *Office of Consumers' Counsel v. FERC*[8] (*Consumers' Counsel II*) emerged as a departure from this traditional approach. The petitioners in *Consumers' Counsel II* stated that the FERC failed to follow properly the mandate in *Office of Consumers' Counsel v. FERC*[9] (*Consumers' Counsel I*), which required the FERC to issue a remedy for a section 5 violation.[10] The FERC maintained that before it could comply with the court's mandate, it had to hold a hearing

1. The Natural Gas Act, ch. 556, 52 Stat. 821 (1938) (codified as amended at 15 U.S.C. §§ 717-717w (1982)).
2. Public Serv. Comm'n v. Federal Power Comm'n, 543 F.2d 757, 793 (D.C. Cir. 1974) (quoting Atlantic Ref. Co. v. Public Serv. Comm'n, 360 U.S. 378, 388-89 (1959)).
3. 15 U.S.C. § 717d (1982).
4. 15 U.S.C. § 717d(a) (1982).
5. *Id.*
6. Office of Consumers' Counsel v. FERC, 826 F.2d 1136, 1139 (D.C. Cir. 1987) [hereinafter Consumers' Counsel II] (citing Tennessee Valley Mun. Gas Ass'n v. Federal Power Comm'n, 470 F.2d 46 (D.C. Cir. 1972)).
7. Atlantic Ref. Co. v. Public Serv. Comm'n, 360 U.S. 378 (1959).
8. *Consumers' Counsel II*, 826 F.2d 1136.
9. Office of Consumers' Counsel v. FERC, 783 F.2d 206 (D.C. Cir. 1986) [hereinafter Consumers' Counsel I].
10. *Consumers' Counsel II*, 826 F.2d at 1139.

to determine whether the section 5 violations continued to exist. If the FERC determined that there were no present violations, it would not grant a remedy.[11]

The issue before the *Consumers' Counsel II* court involved the prospective nature of section 5 remedies.[12] The court concluded that when the FERC commits legal error in a section 5 proceeding, the proper remedy puts the parties in the position they would have been in had the error not been committed.[13] Thus, a remedy may be applied prospectively from the date of the earlier legal error. The retroactive nature of the remedy in *Consumers' Counsel II* expanded the relief available to a gas purchaser when a gas supplier violates section 5.

II. Statement of the Case

A. *Facts*

In 1981, Columbia Gas Transmission Corporation (Columbia) filed two purchased gas adjustments (PGA)[14] with the FERC.[15] Columbia sought to recover $625 million in costs of purchasing natural gas by increasing the rates charged to customers.[16] Several customers challenged the PGA filings, alleging that Columbia's practices were abusive.[17] The FERC held a hearing to determine the merit of those allegations.[18]

In response to the hearing, the FERC issued Opinion 204,[19] which developed and applied a two-part test for "abuse"[20] under section

11. *Id.* at 1138-39.
12. *Id.* at 1138.
13. *Id.* at 1139 (citing Tennessee Valley Mun. Gas Ass'n v. Federal Power Comm'n, 470 F.2d 46 (D.C. Cir. 1972)).
14. In 1972, the Federal Power Commission established the Purchased Gas Adjustment (PGA) alternative for adjusting pipeline rates. Rather than a full section 4 review under the NGA, the PGA alternative allows interstate pipelines to submit a special purchased gas adjustment filing biannually to adjust their rates for increases or decreases in the cost of gas they purchase from suppliers. 18 C.F.R. § 154.38(d)(4) (1986). The PGA alternative allows pipelines to estimate their purchase costs for a six month period and, if accepted by the FERC, will collect them from their rate payers. After the six month lapse, the actual gas purchase costs are compared to the estimated costs. If the actual costs exceed the estimated costs, then the pipeline is allowed to make up the difference through a surcharge. If the estimated costs are greater than the actual costs a refund is made by the pipeline to the ratepayer. 18 C.F.R. § 154.38(d)(4)(iv)(d) (1987). However, the pipeline must file a full section 4 review after three years. 18 C.F.R. § 154(d)(4)(vi)(a) (1987).
15. Columbia Gas Transmission Corp., 16 F.E.R.C. 61,358 (1981); Columbia Gas Transmission Corp., 14 F.E.R.C. 61,379 (1981).
16. Columbia Gas Transmission Corp., 26 F.E.R.C. 61,093 (1984) [hereinafter Opinion 204].
17. Columbia Gas Transmission Corp., 14 F.E.R.C. at 61,380.
18. *Id.*
19. *Opinion 204*, 26 F.E.R.C. 61,093.
20. *Id.* at 61,100.

601(c)(2) of the Natural Gas Policy Act of 1978 (NGPA).[21] The first part of the test required a showing of reckless disregard of the pipeline's fundamental duty to provide service at the lowest reasonable cost. The second part of the test required proof of significant adverse consequences on customers or consumers. Columbia's practices were not abusive under the test. Although Columbia did act with reckless disregard when it failed to consider the marketability of the gas it purchased, the second part of the test was not met. None of Columbia's practices rose to the level of abuse because Columbia's customers had not suffered significant adverse consequences.[22]

Although Columbia's practices were not abusive under the NGPA, Columbia did violate section 5 of the NGA. Columbia's failure to consider marketability in making purchases was imprudent. Furthermore, the FERC determined that high take or pay[23] provisions in Columbia's contracts with gas producers also violated section 5.[24]

The Court of Appeals for the District of Columbia reviewed *Opinion 204*. In *Consumers' Counsel I*, the court affirmed in part and reversed and remanded in part *Opinion 204*.[25] The court affirmed the FERC's finding that two aspects of Columbia's gas acquisition practices violated section 5 of the NGA.[26] More particularly, Columbia failed to consider what effect competition from alternate fuels would have on its customers and its ability to sell in the open market.[27] In addition, Columbia's high take or pay requirements were unreasonable.[28] Although it agreed with the FERC's findings of facts, the court ruled that the FERC had failed to

21. 15 U.S.C. § 3431 (1982). For a more in-depth analysis of the "abuse" test under section 601(c)(2) of the Natural Gas Policy Act, see Note, *A Test For Abuse Under NPGA Section 601(c)(2)*: Office of Consumers' Counsel v. FERC, 8 ENERGY L.J. 93 (1987); Note, *The Definition of Abuse Under The Natural Gas Policy Act of 1978*: Office of Consumers' Counsel v. FERC, 22 TULSA L.J. 625 (1987).

22. *Opinion No. 204*, 26 F.E.R.C. at 61,103.

23. *Id.* at 61,112, 61,120.

24. *Id.* at 61,120.

25. *Consumers' Counsel I*, 783 F.2d 206, 235-36 (D.C. Cir. 1986). In *Opinion No. 204*, the FERC ordered Columbia to "take all reasonable action to mitigate the effect of take or pay provisions of its section 107 contracts," and adopted a contested offer of settlement made by Columbia in a Section 4 rate case covering the period from June 1, 1983 to April 30, 1984. *Opinion No. 204*, 26 F.E.R.C. at 61,126. The issue in *Consumers' Counsel II* was limited to FERC's compliance with the court's mandate that the Commission impose a remedy for Columbia's take or pay clauses. The court in *Consumers' Counsel II* stated that "while we therefore address only this issue our discussion of the nature of prospectivity for purposes of Section 5 remedies should also guide the Commission in its consideration of the other outstanding issues." *Consumers' Counsel II*, 826 F.2d 1136, 1138 n.1 (D.C. Cir. 1987).

26. *Consumers' Counsel I*, 783 F.2d at 236.

27. *Id.* at 224.

28. *Id.* at 229.

impose a proper remedy for section 5 violations, and remanded the case back to the FERC.[29] The FERC's remedy in *Opinion 204* for violations attributed to high take or pay clauses in Columbia's gas purchase contracts[30] was insufficient.

According to *Consumers' Counsel I*, the FERC had failed to properly exercise its authority under section 5. Before granting a remedy under section 5, the FERC must follow two steps.[31] First, the FERC must find that an existing condition is unjust or discriminatory, and second, the FERC must prescribe a remedy for that violation.[32] The FERC's mere urging that Columbia mitigate its contractual terms was "devoid" of a remedy.[33] When the FERC has found a clear violation, it has an affirmative duty to issue a remedy.[34] Further, the court stated that in reformulating its remedies on remand, "the Commission should adhere to the strictures of section 5 of the NGA which stipulates that FERC shall *determine* and *order* 'the just and reasonable . . . practic[e] or contract to be thereafter observed.' "[35]

Pursuant to the court's mandate in *Consumers' Counsel I*, the FERC issued its Order on Remand, Denying Motions and Establishing Hearing Procedures (Order on Remand).[36] In its Order on Remand, the FERC maintained that because remedies for a section 5 violation can be implemented only on a prospective basis, a hearing must be held to determine if those violations are continuing at the present time. Only if the violations continue to exist would the FERC impose a remedy.[37]

On August 25, 1987, the Associate Gas Distributors (AGD), dissatisfied with the FERC's Order on Remand, petitioned the District of Columbia Court of Appeals to enforce the mandate issued by the court in *Consumers' Counsel I*.[38] AGD argued that the prospective nature of section 5 relief meant that the FERC was powerless to order reparation for illegal practices that existed prior to the FERC's finding of illegality.[39] As a result, AGD maintained that a remedy imposed as of the date of the

29. *Id.* at 235-36.
30. *Id.*
31. *Id.* at 233-34.
32. *Id.* at 234.
33. *Id.* at 235-36.
34. *Id.* at 236.
35. Further, the court stressed "that the Commission must consider the entire record as a whole, then act pursuant to reasoned decisionmaking and abjure reliance on any *ex parte* or extra record evidentiary submissions." *Id.*
36. Columbia Gas Transmission Corp., 39 F.E.R.C. 61,776 (1987).
37. *Id.* at 61,777.
38. *Consumers' Counsel II*, 826 F.2d 1136 (D.C. Cir. 1987).
39. *Id.* at 1138-39. On January 16, 1984, the Commission had determined that the take or pay

FERC's finding of illegality was a prospective remedy.[40] To address AGD's claims, the court had to interpret the prospective nature of the section 5 remedies.[41]

B. *Issue*

The issue in *Consumers' Counsel II* was whether a section 5 remedy could ever be applied retroactively to cure legal errors committed in the past by the FERC.[42] Relying on a liberal interpretation of section 5's language, the court held that the FERC can grant a remedy retroactively to cure legal errors which have prolonged a section 5 proceeding.[43]

III. BACKGROUND

Traditionally, section 5 remedies[44] have had only prospective effect;[45] the FERC is powerless under section 5 to make reparation orders.[46] Under the NGA, the FERC is prohibited from retroactively applying a "new rate" under section 5.[47] The NGA requires the "new rate" established by the FERC to be enforced prospectively.[48] Thus, section 5 apparently leaves no opportunity for the FERC to grant a retroactive remedy.

Administrative orders which operate retroactively generally require careful scrutiny.[49] This rule allows an entity to rely upon an administrative agency's order, and also protects expectations under existing rate

---

clauses in Columbia's gas contracts were illegal. *Opinion No. 204*, 26 F.E.R.C. 61,093, 61,120 (1984).

40. *Consumers' Counsel II*, 826 F.2d at 1139.

41. *Id.* at 1138.

42. *Id.*

43. *Id.* at 1138-39.

44. Section 5 reads in relevant part as follows:

> Whenever the Commission . . . shall find that any . . . practice, or contract affecting [a rate charged by a natural gas company for sale of gas subject to Commission jurisdiction] . . . is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable . . . practice or contract to be *thereafter* observed and in force and shall fix the same by order . . . .

Id. at 1138 (quoting 15 U.S.C. § 717d(a) (1982) (emphasis by the court)). The FERC argued and the court affirmed that the use of the word "thereafter" means "that section 5 remedies can have prospective effect only." *Id.* at 1138.

45. Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591 (1944).

46. Natural Gas Pipeline Co. of Am. v. FERC, 590 F.2d 664, 668 (7th Cir. 1979).

47. *Id.*

48. *Id.*

49. *Id.*

schedules.[50] Thus, final rate orders may only be changed prospectively.[51] However, strict adherence to this approach conflicts with established FERC guidelines.

When the FERC commits legal error in a section 5 case, the proper remedy puts the parties in the position that they would have been in had the error not occurred.[52] Therefore, a remedy may be applied retroactively.[53] When applied to section 5 cases involving legal errors committed by the FERC, retroactive relief does not conflict with the anti-reparations language of Section 5.[54]

Tennessee Valley Municipal Gas Association v. Federal Power Commission[55] illustrates how a court can grant relief prospectively from the date of the FERC's legal error. In *Tennessee Valley*, the FERC[56] had erroneously dismissed a section 5 proceeding. Five months later, the FERC vacated its dismissal and reopened the proceedings to determine the correct rate. The petitioner argued that the FERC erred in its dismissal of the section 5 proceeding and that the legal rate, as determined by the FERC, should be applied retroactively as of the day the error was made.[57]

Although the court found that retroactive relief was appropriate, it disagreed with the petitioners regarding the appropriate measure of relief.[58] In order to cure the FERC's legal error, the court measured the retroactivity of the remedy from the time elapsed between the FERC's wrongful dismissal of the section 5 proceeding, and the time the FERC corrected its error by vacating the dismissal and reopening the hearings.[59] By measuring relief from the date of the FERC's legal error, the court placed the injured party in the position it would have been in had

50. *Id.* (quoting Tennessee Valley Mun. Gas Ass'n v. Federal Power Comm'n, 470 F.2d 446, 452 (D.C. Cir. 1972)).

51. *Id.*

52. Tennessee Valley Mun. Gas Ass'n v. Federal Power Comm'n, 470 F.2d 446, 452 (D.C. Cir. 1972).

53. *Id.*

54. *Id.*

55. 470 F.2d 446 (D.C. Cir. 1972).

56. In 1977, the FPC became the FERC. Thus, *Tennessee Valley's* reference to the FPC is equivalent to the FERC.

57. *Id.* at 450.

58. *Id.* at 453.

59. *Id.* at 452. The Commission dismissed the section 5 proceeding on October 17, 1969. On February 6, 1970, the Commission vacated its dismissal, making the elapsed period 112 days. The petitioner urged the court to retroactively apply the just rate as of October 17, 1969 on the basis of two alternative theories. First, the petitioner argued that the decision should be based on the record as it stood in October 1969. The FPC can only correct that error by deciding the fair rate on the basis of a 1966 test period and ordering refunds as if that decision had been made in 1969. Second,

the error never occurred.[60] Thus, gas purchasers are protected from legal errors committed by the FERC.[61]

Retroactive relief from the FERC's legal errors is consistent with the anti-reparation language of section 5,[62] which protects "established expectations under legally established rate schedules."[63] Although rates established by the FERC at one proceeding may later prove to be excessive, a gas purchaser is not entitled to relief until the FERC determines that the rates violate section 5. Thus, a purchaser is not entitled to a remedy during a section 5 proceeding.[64] However, when a section 5 proceeding is delayed due to FERC's legal error, there is no reason to deny the purchaser a remedy from the date of the legal error.[65] The traditional rule forbidding a remedy is not applicable because there are no justified expectations under the FERC's legal error.

IV. THE DECISION IN *CONSUMERS'*

The court in *Consumers' Counsel II* adopted the rule that when legal error is committed in a section 5 proceeding, the proper remedy must put the parties in the position that they would have occupied had the error not occurred.[66] The *Consumers' Counsel II* court found legal error in the FERC's failure in January 1984 to grant relief from Columbia's high take or pay clauses.[67] Thus, the court ordered the FERC to impose the appropriate remedy as of January 16, 1984, in order to place Columbia's customers in the same position they would have occupied had the error not been made.[68]

V. ANALYSIS

In *Consumers' Counsel II*, the court exercised its equitable powers to remedy errors committed by the FERC.[69] The decision provides relief

---

the petitioner suggested that if the record was stale, the staleness was due to the inexcusable inactivity of the FERC, and therefore the court should give full retroactivity to October 1969. *Id.* at 452-53.

60. *Id.* at 453.
61. *Id.* at 452-53.
62. *Id.* at 452.
63. *Id.*
64. *Id.*
65. *Id.* at 452-53.
66. *Consumers' Counsel II*, 826 F.2d 1136, 1139 (D.C. Cir. 1987). Thus, the *Consumers'* court adopted the approach taken in *Tennessee Valley*, 470 F.2d 446.
67. *Id.*
68. *Id.*
69. *See* Indiana & Michigan Elec. Co. v. FPC, 502 F.2d 336 (D.C. Cir. 1974). In *Indiana & Michigan*, the court stated that "[a] court sitting in review of an administrative agency is vested with

from the traditional prospective application of remedies under section 5. In allowing retroactive relief, the court was concerned with protecting gas purchasers from legal error which wrongfully and unfairly prolongs a section 5 proceeding.[70]

The court in *Consumers' Counsel II* acknowledged the general principle that, due to the prospective nature of section 5 remedies, gas purchasers are not entitled to protection from excessive charges during the pendency of a section 5 proceeding.[71] However, relief will be available if the FERC commits legal error which prolongs the section 5 proceeding.[72] The court then grants relief prospectively from the date of the legal error.[73] In effect, this is a retroactive remedy. By granting relief retroactively, the court places purchasers in the position they would have been in had the FERC not committed legal error.

The court's ruling in *Consumers' Counsel II* may raise concerns about a gas supplier's protection from rate charges during the full pendency of a section 5 proceeding.[74] The longer it takes to find legal error, the more of a burden the gas supplier will bear when retroactive relief is ordered. The court in *Consumers' Counsel II* ordered the FERC to apply the appropriate rate prospectively from the date the FERC initially found that Columbia's practices violated section 5. The order overlooked the fact that the proceeding may have been prolonged for reasons other than the FERC's legal error. The question arises as to how broadly the court should define legal error. For example, had *Consumers' Counsel II* been prolonged due to the procedural right of the gas supplier to appeal, rather than legal error, the gas purchaser would not have been entitled to retroactive relief. However, if such an appeal is eventually denied a court could simply rule that legal error was committed when the actual violation was found, and thus grant retroactive relief. In effect,

equity powers which it may [adjust] to the exigencies of the case in accordance with the equitable principles governing judicial action." *Id.* at 346. Still, a court must act within the bounds of the statute and without intruding upon the administrative expertise.

70. *Consumers' Counsel II*, 826 F.2d at 1139. It has also been recognized that section 5 proceedings can be "nigh indeterminable." Atlantic Ref. Co. v. Public Serv. Comm'n, 360 U.S. 378 (1959). In *Consumers' Counsel II*, the court noted that the Commission is in a position to correct what is wrongfully done by virtue of its order. *Consumers' Counsel II*, 826 F.2d at 1139 (citing United Gas Improvement Co. v. Callery Properties, Inc. 382 U.S. 223 229 (1965)).

71. *Consumers' Counsel II*, 826 F.2d at 1139.

72. The court, citing *Tennessee Valley*, stated that "there is no reason to extend that principle to say that gas purchasers have no protection against legal error by the Commission which wrongfully and unfairly prolongs that pendency." *Id.*

73. *Id.*

74. The issue of whether Columbia's practices violated section 5 were also an issue in *Consumers' Counsel I*. Therefore, it would be argued that the section 5 proceeding was still pending as of February 4, 1986.

the order burdens gas suppliers by forcing them to retroactively adjust rates charged during a rehearing regarding the section 5 violation.[75]

Concern with protecting gas purchasers is further highlighted when a court is faced with the prospect of applying a rate increase retroactively in favor of the gas supplier. In this scenario, courts have been reluctant to give retroactive effect to a rate increase. The rationale behind this reluctance is that the NGA bars a regulated seller of natural gas from collecting a rate other than one filed with the FERC. Furthermore, the FERC itself is prevented from imposing a rate increase for gas already sold.[76] To allow retroactive application of a rate increase for gas already sold would circumvent the uniform regulatory scheme of the NGA.[77]

Courts have recognized other situations where retroactive relief for gas purchasers is appropriate. The FERC has retroactive rate making authority to order natural gas producers to make refunds under Section 4(e) of the NGA,[78] which provides that modification of natural gas rates in a proceeding to review newly filed rates may be made retroactive through the refund power of the FERC.[79] That rate will be given retroactive effect from the date that the increased rates become effective.[80]

The refund order recognized in section 4(e) relates to section 5 with

75. Arkansas Louisiana Gas Co. v. Hall, 453 U.S. 571 (1981). In *Arkansas Louisiana Gas*, the gas supplier and gas purchaser entered into a contract for the sale of gas. The contract contained a fixed price schedule and a "favored nations clause," which provided that if the purchaser purchased gas from another party at a higher rate than it was paying gas suppliers, then the suppliers would be entitled to a higher price for their sales to gas purchasers. Gas suppliers filed their contract and rates with the FPC. Later, gas purchasers purchased certain leases from another and began producing gas on its leasehold. Gas suppliers filed an action alleging that such lease payments triggered the favored nations clause. Because gas purchasers had not increased payments to gas suppliers as required by the contract, the suppliers sought damages in equaling the difference between the price they actually were paid in the intervening years and the price they would have paid had the clause gone into effect. The Louisiana Supreme Court's decision awarded such damages amounting to "nothing less than the award of a retroactive rate increase based on speculation about what the Commission might have done had it been faced with the facts of this case." *Id.* at 578-79. In contrast, the United States Supreme Court criticized the Louisiana ruling because the decision undermined the legislative scheme of the NGA. *Id.* at 579, 581-82.

76. *Id.* at 578.

77. *Id.* at 579.

78. 15 U.S.C. § 717c (1982).

79. Section 4 requires natural gas companies to file all rates and contracts with the FERC. 15 U.S.C. § 717c(c) (1982). Any changes in previously filed rates or contracts must be filed with the FERC at least 30 days before they are to go into effect and, except in the case of industrial rates, the Commission may suspend the operation of the new rate pending a determination of its reasonableness. *Id.* at § 717c(d). If a decision has not been reached before the period of suspension expires (a maximum of 5 months), the filed rate must be allowed to go into effect, but the FERC's order may be made retroactive to that date. *Id.* at § 717c(e).

80. Colorado Interstate Gas Co. v. FERC, 791 F.2d 803, 807 (10th Cir. 1986), *cert. denied*, 107 S. Ct. 907 (1987).

regard to newly changed gas rates.[81] The FERC's power with regard to rate setting is defined by section 4(e) and section 5(a) of the NGA. Section 5 allows the FERC to set aside and modify any rate or contract which it determines to be unreasonable or unjust.[82] If the rates are unlawful, section 5 allows the FERC to adjust the rate prospectively.[83] Section 5 applies to all the rates of a natural gas company, whether long established or recently changed.[84]

Section 4(e) adds to the basic power granted in section 5. In case of a newly changed rate (except industrial rates) or contract, the FERC is empowered "(1) to preserve the status quo pending review of the new rate by suspending its operation for a limited period, and (2) thereafter to make its order retroactive, by means of the refund procedure, to the date the change becomes effective."[85] This refund power allows the FERC to compensate gas purchasers for overpayment of gas rates during the pendency of a section 4 new rate determination. By allowing such retroactive relief under both section 5 and section 4 of the NGA, the FERC is enforcing the primary purpose of the NGA. The primary purpose of the NGA is to protect consumers of natural gas from exploitation at the hands of the natural gas companies.[86]

VI. CONCLUSION

The court in *Consumers' Counsel II* held that when FERC commits a legal error in deciding a section 5 case, the proper remedy puts the affected parties in the same position that they would have occupied had the violation not occurred. Such relief is consistent with the anti-reparation language in Section 5. According to *Consumers' Counsel II*, remedies are to be applied prospectively from the date that the FERC determines that a gas suppliers' practices are in violation of section 5. Such relief fulfills the primary purpose of the NGA.

Laurie L. Largent

81. United Gas Pipe Line Co. v. Mobile Gas Serv. Corp., 350 U.S. 332, 341 (1956).
82. *Id.*
83. *Id.*
84. *Id.*
85. *Id.*
86. Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591, 610 (1944).