

under this Act." The rehearing petitioners have not disputed our finding that circumvention of maximum lawful prices cannot be a concern when there are no maximum lawful prices to circumvent. The Commission would exceed its authority under the NGPA if it defined categories of first sales for reasons other than to prevent circumvention of maximum lawful prices.

Accordingly, for the same reason, petitioners' arguments regarding Congressional intent in passing the Decontrol Act are unpersuasive. It is not the Commission's action which causes the pipeline and LDC affiliates' sales for resale to be subject to our NGA jurisdiction. It was passage of the Decontrol Act which changed the first sale status of affiliate sales for resale. The Decontrol Act repealed the maximum lawful price provisions of Title I of the NGPA but did not revise the definition of first sales in section 2(21) of the NGPA. The legislative history cited by Enron indicates the intent of Congress that the definition of first sale in section 2(21) still be given full effect. However, that definition includes the delineation of the Commission's authority under section 2(21)(A)(v) to add categories of sales to the first sale definition.⁶ That part of section 2(21) grants discretionary authority to the Commission to add categories of sales to the first sale definition in only one narrow circumstance: to prevent circumvention of NGPA maximum lawful prices, which no longer exist as a result of the Wellhead Decontrol Act.

Enron tries to bolster its argument on Congressional intent by claiming that the use of the term "wellhead" in the NGPA and Decontrol Act is a misnomer and that the scope of both acts is much broader than the production area market. Thus, it argues, when the Congress explained that Commission jurisdiction over interstate pipeline sales for resale was to be unaffected by the Wellhead Decontrol Act,⁷ it can be inferred that Congress thereby meant to indicate that all other sales for resale were to remain first sales. We do not interpret the cited reaffirmation of the Commission's NGA jurisdiction over pipeline sales for resale, on which Enron relies, to create an exclusion from NGA jurisdiction relative to all other sales not therein mentioned. The effect of the Decontrol Act on the NGPA is more properly based on the plain terms

of the relevant sections of the statutes as enacted and express statements of intent in the Congressional reports, and we find nothing there to support Enron's proposed inference.

Designated Parties maintain that, in finding no substantive effect of its rule, the Commission failed to recognize the role of Title VI of the NGPA providing for the coordination of the NGPA with the NGA. However, all that Title VI and, in particular, section 601(a) of the NGPA provides is that the Commission's jurisdiction under the NGA does not apply to first sales. Accordingly, that section says nothing of relevance to the issue addressed here regarding what sales are first sales.

The petitioners also assert that the Commission has broad rulemaking authority under section 501 of the NGPA to reinstate § 270.203(c).⁸ We do not agree. The Commission's authority to define terms used in the NGPA, including first sales, is limited. Section 501(b) of the NGPA states, "Any such definition shall be consistent with the definitions set forth in this Act." For the Commission to define first sales for purposes other than circumvention would be inconsistent with the definition of first sales established by Congress in section 2(21) of the NGPA. The Commission cannot exceed the authority granted to it by the statute in performance of its duties.

We also reject the suggestion that the October 17, 1994 order erred in finding that no competitive disadvantage for marketing affiliates would arise from no longer treating marketing affiliate sales for resale in interstate commerce as first sales. As the October 17 order stated, Order No. 547 issued blanket certificates under NGA section 7 to all persons making sales of gas for resale in interstate commerce who are not interstate pipelines. Thus, the blanket certificates apply to all affiliated marketers who make sales for resale in interstate commerce, whether affiliated with an interstate pipeline or with an intrastate pipeline or LDC. Those certificates allow the affiliated marketers to operate exactly as if they were nonjurisdictional first sellers. Marketers making sales under the blanket certificate may make sales to whomever they choose at any price they can negotiate; no Commission authorization of any kind is required beyond the blanket marketer certificate itself. In short, the blanket marketer certificates place all marketers on an

equal competitive footing by effectively eliminating the distinctions in treatment that formerly existed between jurisdictional and nonjurisdictional marketers.

Petitioners have not provided any evidence to support their contention of an adverse effect from the removal of the § 270.203(c) first sale definition. Moreover, any change in the blanket marketer certificate would entail a new rulemaking proceeding in which parties would have a full opportunity for notice and comment. Any supportable economic harm could be raised at that time.

In any event, Petitioners' contentions concerning the negative effect on marketing affiliates of subjecting their sales for resale to the Commission's NGA jurisdiction are essentially policy arguments that should have been directed to Congress. The Commission does not have the ability to expand the authority granted it by Congress, even if arguably there are valid policy reasons for reinstating § 270.203(c).

B. Procedure

Rehearing applicants contend that the Commission failed to satisfy the requirements of the APA and section 502 of the NGPA by removing § 270.203(c) without notice and comment. The notice and comment issue was fully addressed in the October 17, 1994 order and we will not repeat that discussion here. With one exception, the petitioners essentially make the same arguments which were rejected in the October 17, 1994 order.

The one new contention is that section 502 of the NGPA requires the Commission to give an opportunity for oral argument. Section 502(b) provides that, "to the maximum extent practicable," an opportunity for oral presentation shall be provided with respect to any proposed rule. Section 502(b) does not provide for an absolute right to make an oral presentation, and the Commission has the discretion to rely on written comments if it appears that no purpose would be served by establishing oral argument. In particular, we believe the Commission is not required to provide an opportunity for oral presentations in the instant case where the Commission is acting on a statutory mandate for which there is no other course of action authorized and there currently is no practical difference in treatment of the affected companies after, as opposed to before, elimination of the subject regulation. In any event, petitioners' central claim is for the Commission to start the rulemaking process principally in order to make written comments. We

⁶ Enron's rehearing request at page 5.

⁷ Request for Rehearing or Reconsideration of Enron at p. 5 (citing NGPA Conference Report at pp. 8-9).

⁸ NGPA Section 501(a) provides that the Commission may issue "rules and orders as it may find necessary or appropriate to carry out its functions under this Act."