as of January 1, 1993, all maximum lawful prices for first sales of natural gas. Order No. 567 removed from the Commission's regulations various regulations that the Commission considered obsolete or nonessential in light of the decontrol of first sale prices. These included the § 270.203(c) definition of a first sale. On October 17, 1994, the Commission issued the subject order which denied rehearing of Order No. 567.

In the October 17, 1994 order, on rehearing of Order No. 567, in response to objections directed at the removal of § 270.203(c), the Commission upheld its action, finding that, in light of wellhead decontrol, no purpose would be served by § 270.203(c). That section was originally adopted pursuant to the Commission's authority under NGPA section 2(21)(A)(v) to define, as a first sale, any sale that does not otherwise qualify under NGPA section 2(21) as a first sale "in order to prevent circumvention of any maximum lawful price established under this Act." The Commission held that circumvention of maximum lawful prices cannot be a concern when there are no maximum lawful prices to circumvent. The Commission also found that the removal of that section had no substantive impact on the rights of the parties since, at present, there is no practical difference between operating under the blanket marketer sales certificate (to which affiliated marketers may became subject as a result of the removal of that section 4) and treatment as a nonjurisdictional first seller. Finally, the Commission rejected arguments that the Commission violated the Administrative Procedures Act's (APA) notice and comment requirements.

## III. Arguments on Rehearing

On rehearing, Enron first asserts that, by retaining NGA jurisdiction over affiliate sales, the Commission is acting in contravention of its own promarketing policies as well as those of Congress stated in the Wellhead Decontrol Act. Enron asserts that the Commission appears to acknowledge only that its action will affect interstate pipeline affiliates, whereas it also affects marketing affiliates of intrastate pipelines and LDCs. Further, it argues that this returns to the bifurcated system of jurisdiction of sales for resale, but not of direct sales, that led to gas shortages

in the 1970's. Further, it asserts that the legislative history of the Wellhead Decontrol Act is rife with statements that indicate Congress' intent to remove all vestiges of natural gas price control. It asserts that Congress only intended to continue NGA jurisdiction of interstate pipelines and, in response to the reasoning of the October 17, 1994 order, queries of what purpose will be served by continuing the appearance of regulation, rather than meaningful regulation. Second, Enron asserts that nonjurisdictional marketers have a competitive advantage over marketing affiliates who make sales for resale in interstate commerce, because marketing affiliates are subject to regulatory uncertainty. It submits that this uncertainty increases market risks and impedes the ability of marketing affiliates to obtain financing and plan transactions. Finally, Enron argues that the substantive impact of the removal of § 270.203(c) required the Commission to give parties advance notice and the opportunity to comment under the APA. It maintains that the Commission has broad rulemaking authority under section 501 of the NGPA to reinstate section 270.203(c).

In their request for rehearing, in addition to a number of arguments similar to those made by Enron, Designated Parties contest the Commission's position that the change to light-handed regulation has no substantive impact on the rights of the parties. They assert that regulation diminishes the attractiveness of natural gas as a fuel for power generation projects because regulation may adversely affect the availability or cost of financing such projects. They assert that regulation tends to adversely affect the ability of parties "to monetize the asset represented by accounts receivable under long-term supply agreements" due to the risk of changes in contract pricing or other terms pursuant to the Commission's NGA section 5 authority. They assert, like Enron, that regulation resurrects the bifurcated regulation/nonregulation system and allegedly gives nonjurisdictional marketers an advantage. Finally, they assert that, in certain cases,<sup>5</sup> some intrastate pipelines may lose their non-jurisdictional status under Title IV of the NGPA as a result of the Commission's action which may have a "ripple" effect as intrastate entities take contractual action to protect themselves from regulation. Finally, they argue that the Commission has failed to recognize that Title VI of

the NGPA coordinates the NGA and NGPA and defines the boundaries of the Commission's jurisdiction, contrary to the Commission's ruling.

Designated Parties also allege that the Commission violated APA and NGPA notice and comment requirements by leaving the parties to seek rehearing. They argue that Order No. 567 gave no notice of the reasoning behind the elimination of the regulation and, hence, this rehearing is the first real opportunity the parties have had to respond to the Commission's order. They argue that the Commission failed to adequately justify its finding of "good cause" to dispense with the APA procedures for the reason that the instant situation does not fall into the kind of situations where action is required immediately. Further, they assert that the Commission's finding that the APA procedures were unnecessary was in error for the same reason, as asserted above, that the Commission's action did have a substantive effect on the parties. They also observe that section 502(b) of the NGPA provides that an opportunity for oral presentations is to be made available "to the maximum extent practicable." Accordingly, they ask that the Commission stay the effect of its order and institute new rulemaking procedures on this issue.

Coastal contends that the Commission erred in finding no substantive effect of its decision and in failing to provide notice and comment. It asserts that the number of comments might have been greater than those received on rehearing had the Commission not issued a final rule at the outset.

## IV. Discussion

For the reasons discussed below and in the October 17, 1994 order, the Commission finds that the petitioners have raised no new arguments that warrant any change in the Commission's action on this issue. Accordingly, the Commission denies the requests for rehearing or reconsideration.

## A. The Authority of the Commission To Define First Sales

The Commission continues to believe that the deletion of § 270.203(c) was appropriate for the reasons stated in the October 17, 1994 order. The Decontrol Act has eliminated all maximum lawful prices applicable to first sales. As we observed in our October 17, 1994 order, no purpose is served any longer by our exercising our authority under NGPA section 2(21)(A)(v) to define additional categories of sales as first sales "in order to prevent circumvention of any maximum lawful price established

<sup>&</sup>lt;sup>4</sup> Pipeline and LDC marketing affiliates only become subject to the blanket certificate to the extent they sell natural gas for resale in interstate commerce. Thus, a direct sale or a sale in intrastate commerce would not be covered by the blanket certificate since the Natural Gas Act does not otherwise apply to such sales.

 $<sup>^5</sup>$  Citing Westar Transmission Co., 43 FERC  $\P$  61,050 (1988) and Texas Utilities Fuel Co., 44 FERC  $\P$  61,171 (1988).