

**TESTIMONY OF
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**ON BEHALF OF THE
INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA**

**BEFORE THE
SUBCOMMITTEE ON ENERGY AND POWER
COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES**

**HEARING REGARDING THE
“PIPELINE INFRASTRUCTURE AND COMMUNITY PROTECTION ACT OF
2011”**

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Mr. Chairman and members of the Subcommittee:

Good morning. My name is Daniel Martin, and I am senior vice president of pipeline safety at the El Paso Pipeline Group, as well as the chairman of INGAA's research arm, the INGAA Foundation. El Paso's Pipeline Group owns and operates 43,000 miles of interstate natural gas pipelines, representing 13 percent of the total U.S. capacity. We deliver 26 percent of the natural gas delivered to U.S. consumers. Our pipelines transport natural gas from Gulf Coast supply areas, the prolific Rockies supply basins, and the shale plays that will play a significant role in meeting the nation's long-term natural gas supply. We deliver natural gas to the major consuming markets of the Northeast, Southeast, Rockies, and Southwest, as well as Mexico.

Today I am testifying on behalf of the Interstate Natural Gas Association of America, or INGAA. Our members operate approximately two-thirds of the nation's natural gas transmission pipelines and 90 percent of the interstate natural gas transmission pipelines in the United States. The pipeline systems operated by INGAA's member companies are analogous to the interstate highway system, transporting natural gas across state and regional boundaries. Last month INGAA testified before this Subcommittee and outlined our perspectives on pipeline safety generally and our positions on particular provisions of the Senate pipeline safety reauthorization bill (S. 275) specifically. We stated that S. 275 is a bill INGAA supports. Today, I will direct our comments to the Energy and Commerce Committee draft bill. Let me state at the outset that the draft – which largely is based upon S. 275 – also is a bill INGAA can support. In fact, we would urge that

several provisions contained in this draft House bill be included in any final legislation enacted by the House and Senate.

COMMENTS ON THE DRAFT BILL

INGAA has established for the natural gas transmission pipeline industry a goal of moving to a “zero-incident” environment. This is an aggressive goal that will require determined and sustained effort over time on a number of fronts, including integrity management, damage prevention and technology research. The draft bill would establish or improve programs like integrity management and damage prevention, which will play a major role in moving our nation to an increasingly safer pipeline network. Our comments below highlight provisions of the draft bill that are particularly noteworthy, as well as areas where we would recommend further refinement:

Damage Prevention

The draft bill continues the decade-long effort to improve state damage prevention laws by setting strong minimum standards and prohibiting exemptions for mechanical excavators, municipalities, state agencies (such as highway departments) and their contractors. Accidental damage to pipelines by excavators remains a leading cause of deaths and injuries along pipeline systems. Excavation incidents are the most avoidable type of pipeline incidents, and the best method for prevention is through comprehensive damage prevention programs. Requiring all excavators to “call before digging” is critical to a successful damage prevention program, and therefore exemptions from participation,

especially for large-volume excavators, make little sense. INGAA strongly supports this provision of the draft bill.

Automatic and Remotely Controlled Shut off Valves

INGAA believes that this provision is balanced and well written, and therefore supports it. We recommend striking existing section 60102(j)(3) of title 49 because it would be superseded by this new provision.

Integrity Management

This is perhaps the most important section in the bill. INGAA generally supports the update of the natural gas transmission Integrity Management Program envisioned in the draft bill. Still, we have a few comments:

1) **Scope** – The bill would require the Secretary of Transportation to evaluate an expansion of integrity management beyond existing “high consequence areas,” which for natural gas transmission pipelines are those pipe segments located in populated areas. The Secretary would be required, within one year, to make recommendations to Congress on whether to expand the program, and if so, to what degree. We note that the section specifically enumerates factors upon which the Secretary should base the recommendations. These factors include the need to remain focused on reducing risks in populated areas, as well as the expansion of integrity management in a manner that reduces risks to an increasing number of people, rather than simply an unfocused increase in the number of pipeline miles covered under the program. INGAA believes that it is

important for Congress to provide the Secretary with this guidance that the priority of integrity management should remain risk-reduction.

2) **Class location regulation redundancy** – The pipeline safety regulations for natural gas transmission lines promulgated in 1970 included “class location” requirements intended to ensure that pipeline operators employ an increased margin of safety for pipeline segments located in populated areas. Pursuant to these regulations, pipelines must undertake periodic surveys to identify population increases in close proximity to pipeline rights-of-way. Where applicable, the regulations require that this increased margin of safety be achieved by: (1) installing replacement pipe with a higher strength relative to operating pressure; (2) reducing the operating pressure of the system; or (3) undertaking pressure testing. In practice, the primary method for complying with this requirement has been pipe replacement.

When proposed a decade ago, it was assumed that the Integrity Management Program (IMP) largely would supplant class location requirements, since both programs are designed to reduce risk in populated areas and the IMP is a far more sophisticated, data-driven alternative. In fact, when the Department of Transportation (DOT) developed its cost-benefit analysis for the integrity management rule in 2003, the agency assumed that the industry would save \$1 billion over 10 years because class location requirements would be waived for pipe segments covered by the IMP.¹ While PHMSA has granted a

¹ RSPA Final Regulatory Evaluation, Pipeline Integrity Management in High Consequence Areas, Docket RSPA-00-7666-356.

limited number of such waivers, a uniform requirement that avoids redundancy would be a more efficient and consistent solution.

Section 7(d) of the draft bill requires the Secretary to initiate a rulemaking within two years to eliminate class location requirements for natural gas transmission pipeline segments regulated under the IMP. INGAA strongly supports this provision.

3) Technical correction on reassessment intervals – Section 7(f) of the draft bill makes a technical correction to the reassessment interval for natural gas transmission lines covered under the IMP. The current requirement is seven years, which DOT has interpreted to mean precisely 84 months. The effect of this hard deadline is that operators are compelled to schedule both inspections and any repairs well in advance of the seven-year deadline, which over time shrinks the interval and starts to create operational problems as pipelines struggle to avoid conducting inspection and maintenance during peak winter and summer demand periods. This subsection clarifies that the interval is seven calendar years, not to exceed 90 months. The liquid pipeline integrity management regulations include similar flexibility, albeit eight months of leeway as opposed to the six months contained in the draft bill for the natural gas transmission IMP. This correction provides reasonable regulatory flexibility while still meeting the overall mandated seven-year requirement. INGAA strongly supports this provision.

Incident Notification

INGAA supports the Senate provision on this issue but notes that the draft bill provides some modifications that we would support. For example, the draft bill focuses on timely reporting to the National Response Center, and reasonable estimates of volume releases are permitted. An operator also is permitted to revise information reported to the National Response Center as more data becomes available in the hours after an incident.

Cost Recovery for Design Reviews

The Pipeline and Hazardous Materials Administration (PHMSA) now is funded, almost exclusively, through user fees assessed on regulated liquid pipelines, LNG terminal owners and natural gas transmission pipelines. The proceeds of this user fee fund the operations and staff of PHMSA, as well as the state grants that PHMSA provides annually.

PHMSA contends that a special user fee should be created to recover costs incurred when it reviews proposed new, large pipeline construction projects. PHMSA has indicated that this authority would be used only for exceptionally large projects that require significant PHMSA staff resources. The draft bill creates a threshold for this new user fee that would apply to projects with a total cost of \$4 billion or greater (adjusted for inflation on a periodic basis), or projects that use “new or novel technologies or designs.”

INGAA supports the modifications that have been made to this section in the draft bill.

In particular, we support the guidance defining what is meant by the term “new or novel

technologies.” We suggest that, to avoid having this applied in an unintended broad manner, this provision cover only those projects that propose to use “prototype or unique technologies or designs.” INGAA also wants to ensure that, to the extent special fees are collected under this program, PHMSA does not count such costs in the annual budget baseline which is offset by existing user fees collected under 49 USC 60301. Such a situation would, in effect, create a double collection of fees for the same activities. For this reason, we suggest modifying the amendment to section 60117 (n) to state that: “The Secretary shall not collect fees under section 60301 for activities in which a fee is collected for design reviews under this subsection.”

Special Permits

INGAA generally agrees with the modifications to special permit approval and review that are encompassed in this section. We suggest, however, that there be a predictable process if PHMSA proposes to modify, suspend or revoke a special permit. Such processes might include, for example:

- requiring the Secretary to consider the commercial and/or market implications of a change in pipeline operations that could result from the permit alteration, and
- providing an on-the-record hearing to the operator within a reasonable timeframe.

Administrative Enforcement Process

While Congress has granted PHMSA considerable enforcement authority in recent years, and now proposes to enhance that authority in the pending reauthorization bill, the “due process” required in PHMSA enforcement actions has not kept pace. PHMSA does not

have the same procedures utilized by many other federal and state agencies – procedures that ensure a predictable and fair enforcement process.

The draft bill contains an important provision that directs PHMSA to develop regulations designed to ensure that pipeline operators receive a fair hearing in enforcement proceedings. INGAA supports this provision.

Pipeline Safety User Fees

As mentioned previously, PHMSA is funded primarily through user fees assessed annually on jurisdictional liquid pipeline operators, liquefied natural gas terminal operators and natural gas transmission pipeline operators. The statute that created the user fees in 1986² specifically limits the collection of user fees from the natural gas sector to “each person operating a gas pipeline transmission facility,” with the exception of LNG terminal operators who have their own user fees. As a result, natural gas transmission pipeline operators now are being assessed user fees that fund a variety of regulatory activities that are outside the scope of transmission pipeline regulation, particularly with respect to natural gas distribution programs and state grants. These gas distribution program costs were once small. Now, they are considerably larger than the costs for gas transmission activities – in fact, twice as large according to recent data from PHMSA. This means that the natural gas transmission user fee now paid to PHMSA is three times larger than it would be if it were a genuine user fee program in which all users contributed according to cost causation.

² 49 USC 60301

While interstate pipelines are authorized by FERC to charge cost-based maximum rates that include the recovery of such user fees, pipelines in practice often must discount rates in order to retain business in a competitive environment. Such competition places pipelines at risk of not fully recovering the costs included in their rates, including the cost of PHMSA user fees. Given that the aforementioned PHMSA fees associated with gas distribution are not related to the transmission of natural gas, such costs should not be borne by transmission pipelines and/or their customers.

INGAA currently is engaging key stakeholders to develop a legislative solution for recovery of these non-transmission costs. If an agreement can be reached, we hope the Committee will include such a provision in future versions of this legislation.

CONCLUSION

Mr. Chairman and members of the Subcommittee, INGAA supports reauthorization of the Pipeline Safety Act this year. If enacted, the draft legislation that we are reviewing today would provide a framework supporting the achievement of our goal of zero pipeline incidents. We applaud the priority you have placed on developing this bill and seeking comments from stakeholders. Since this draft legislation closely mirrors the Senate Commerce Committee bill, the likelihood that a reauthorization bill can be completed by the end of the year increases. We thank you for holding this hearing and seeking our comments.

SUMMARY OF INGAA TESTIMONY

The Interstate Natural Gas Association of America (INGAA) represents interstate natural gas transmission pipelines in the United States. Our members operate a 200,000 mile network of large-diameter pipelines that transport natural gas supplies throughout the nation.

The Energy and Commerce Committee has prepared a draft Pipeline Safety Act reauthorization bill that closely mirrors legislation already moving through the Senate. INGAA supports the Senate legislation, and it supports the committee draft, which includes a number of improvements over the Senate bill. These improvements include provisions on integrity management (such as the elimination of duplicative class location regulations, and clarification of gas transmission reassessment intervals), damage prevention, incident notification, administrative enforcement procedures, and cost recovery for design reviews. We hope the Committee will consider additional refinements to the special permits section, and if agreement can be reached among stakeholders, a provision on the recovery of PHMSA user fees related to those natural gas programs which are not associated with transmission.