

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

**REGARDING
LEGISLATIVE HEARING TO EXAMINE PIPELINE SAFETY
REAUTHORIZATION**

MARCH 1, 2016

Good morning Chairman Whitfield, Ranking Member Rush, and members of the subcommittee. My name is Donald F. Santa, and I am President and CEO of the Interstate Natural Gas Association of America, or INGAA. INGAA represents interstate natural gas transmission pipeline operators in the U.S. and Canada. The pipeline systems operated by INGAA's 24 member companies are analogous to the interstate highway system, transporting natural gas across state and regional boundaries.

INGAA testified before this subcommittee last July regarding pipeline safety and reauthorization of the Pipeline Safety Act. In that testimony, I outlined INGAA's safety commitments, undertaken in 2011, and the most recent amendments to the law that specifically affect natural gas transmission safety programs. I direct my testimony today to the specifics of the draft reauthorization bill now before the subcommittee.

Summary

The discussion draft is very similar to the bill (S. 2276) approved last December by the Senate Committee on Commerce, Science and Transportation. That legislation is now pending before the full Senate and may be approved as early as this week. We appreciate that this committee's discussion draft parallels the Senate version in most respects, because this will make it far easier to conference the two bills. The discussion draft, however, differs from the Senate bill in one important respect.

Namely, the draft includes a provision that would allow an individual to petition a federal district court to enjoin the Pipeline and Hazardous Material Safety Administration (PHMSA) in connection with that agency's alleged failure to act. As explained further in this testimony, INGAA believes this provision is ill-advised. It could allow the priorities of individual parties and the judgment of a federal district court judge to supplant the pipeline safety priorities, and the allocation of agency resources, established by PHMSA pursuant to the guidance provided by Congress. INGAA would seriously consider opposing the pipeline safety bill if this provision were included.

INGAA Comments on Draft

INGAA has consistently advocated three goals in connection with the pending reauthorization of the Pipeline Safety Act. These goals are:

1. Establish authorized funding levels for the pipeline safety programs at PHMSA for the next four fiscal years;
2. Continue to focus PHMSA rulemaking resources on the completion of the remaining mandates from the 2011 reauthorization (2011 Act), with one key exception below; and
3. Create federal minimum safety standards and regulation for underground natural gas storage facilities.

INGAA expressed concerns about several amendments to S. 2276 that were offered and ultimately adopted during the Senate committee markup last December. Nonetheless, we support the underlying bill because it meets INGAA's three stated goals. Our concerns about the amendments added during the Senate committee markup are technical, so we remain optimistic that those matters can be addressed, and that a final bill will have our support.

INGAA's specific comments on this subcommittee's discussion draft include the following:

Regulatory Updates and Statutory Preference

Sections 2 and 3 of the discussion draft address the second of INGAA's three stated goals for the reauthorization; namely, maintaining a focus at PHMSA on fulfilling the mandates from the 2011 Act. These provisions largely track similar provisions in the

Senate legislation. Section 2 references the use of a “direct final rule” or “interim final rule” as options for expediting rulemakings that have a significant level of stakeholder consensus. While we doubt that the pending rulemakings from the 2011 Act could achieve that high level of consensus, it is possible that a rulemaking on underground natural gas storage, consistent with the provisions in section 11 of the discussion draft, could meet that high standard. Finally, while INGAA wants to ensure that fulfilling the 2011 mandates is the primary rulemaking focus at PHMSA, INGAA also supports action on an underground storage regulation, an issue that was not addressed by the 2011 Act. We, therefore, recognize that PHMSA needs some discretion to act on other matters, especially if there is sufficient consensus to allow prompt action using a direct final rule or an interim final rule process.

Integrity Management Review

Section 4 of the discussion draft largely tracks provisions in S. 2276 requiring the Government Accountability Office (GAO) to prepare a report on the effectiveness of the natural gas transmission and hazardous liquid pipeline integrity management programs. This provision in the discussion draft omits an analysis, included in S. 2276, on legacy class location requirements for gas transmission pipelines. These class location requirements are a vestige of the first federal pipeline safety rules adopted in 1970. The need for these rules has in many ways been supplanted by the more sophisticated and data-driven integrity management programs adopted pursuant to subsequent pipeline safety laws and PHMSA rules. Nonetheless, gas transmission operators still are required

to comply with two redundant regulatory requirements intended to address the same need. Congress should task GAO, as part of this review, to analyze the effectiveness of integrity management for gas transmission pipelines and whether any purpose is served by these duplicative regulations. (Hazardous liquid pipelines do not have class location requirements.)

Inspection Report Information

This is another provision that parallels S. 2276. We appreciate the intent of this provision and the desire to obtain feedback on PHMSA inspections in a timely manner. Based on the experience from INGAA's member pipeline companies, PHMSA normally provides a post-inspection briefing shortly after the inspection is completed. However, the provision in the draft states that in addition to this briefing, a written finding (to the extent practicable) must also be provided. The 30-day deadline makes it difficult to meet the written requirement under the best of circumstances. We suggest deleting this second requirement, or in the alternative specifying a 180-day deadline for the written requirement.

Underground Gas Storage Facilities

While it is similar to the Senate provision on underground natural gas storage, section 11 of the discussion draft includes several refinements that INGAA supports. First, the discussion draft clarifies that PHMSA may delegate the oversight of intrastate

underground gas storage facilities to the states, and that PHMSA may allow a state to participate as an “agent” in the oversight of interstate gas storage facilities, as currently permitted in sections 60105 and 60106 of Title 49. This is consistent with long-held practice with respect to natural gas pipelines and makes sense for the regulation of underground natural gas storage.

Second, the user fee authority in the discussion draft is clearer in its intent. That is, the user fee provision in the discussion draft makes clear the funds collected pursuant to this user fee will be directed to a discretionary account that will be used to offset the annual cost incurred by PHMSA to administer the cost of underground natural gas storage regulation (rather than sending the proceeds from the user fee to the Treasury).

Actions by Private Persons

The pipeline safety statute already includes a private right of action. 49 U.S.C. 60121 provides an individual the right to file for an injunction against a pipeline operator (or other regulated entity) alleging that the operator is in violation of a regulation, as long as the appropriate regulator or chief law enforcement officer (federal or state) is not acting to correct that violation. This authority has been used on several occasions, and remains in force.

The provision in the discussion draft would go beyond the existing authority, however, by allowing a private party to seek injunctive relief against PHMSA based on its alleged

failure to perform “any nondiscretionary duty” under the federal pipeline safety law. If enacted, this provision could result in the pipeline safety priorities and the allocation of agency resources, established by PHMSA pursuant to the guidance provided by Congress, being supplanted by the priorities of individual private litigants and the judgment of a federal district court judge.

In addition, while the provision in section 15 of the discussion draft refers to an injunction against the agency “for failure to perform any nondiscretionary duty under this chapter,” experience demonstrates that litigants will attempt to use such authority to challenge the sufficiency of an agency’s action in addition to allegations of inaction. Consequently, if enacted, this provision would create yet another avenue for challenging PHMSA’s actions in addition to those already provided by the Administrative Procedure Act.

For example, this provision would be another arrow in the quiver of those opposing new pipeline construction, as they could seek injunctive relief in connection with PHMSA’s review of the design of a proposed new natural gas pipeline. In addition, the provision could be used to seek injunctive relief compelling PHMSA to update existing rules or pursue other actions based on the allegation that the agency’s inaction was a failure to perform a nondiscretionary duty under the pipeline safety law. If allowed, this situation could rapidly deteriorate into a regime of “regulation by litigation.”

Oversight is the role of Congress and not the courts. This ill-advised provision should be removed from the discussion draft.

Authorization of Appropriations

INGAA generally supported the suggested authorization levels in the Senate legislation. S. 2276 established a baseline consistent with the amount now appropriated for fiscal year 2016, and then authorized an increase in the funding level of approximately 2 percent for each of the next three years.

We would like to make a point about the fiscal years covered by this authorization. The Senate legislation covers FY16 through FY19. While this technically would be a four-year authorization, as a practical matter FY16 has already been appropriated, and by the time this legislation is enacted, the current fiscal year will be close to an end. For this truly to be a four-year authorization, INGAA suggests beginning with the FY17 authorization or, in the alternative, making the authorization effective through FY20.

Conclusion

Mr. Chairman, thank you again for the opportunity to provide our views on the discussion draft. I would be happy to answer questions at the appropriate time.