TESTIMONY OF THE AMERICAN PUBLIC GAS ASSOCIATION

BEFORE THE HOUSE ENERGY AND COMMERCE SUBCOMMITTEE

ON ENERGY AND POWER

JULY 15, 2011

Mr. Chairman and Members of the Committee, the American Public Gas Association (APGA) appreciates this opportunity to submit testimony on behalf of public gas systems to the Committee for this important hearing on pipeline safety and the Pipeline Infrastructure and Community Protection Act of 2011.

APGA is the national association for publicly-owned natural gas distribution systems. There are currently approximately 1,000 public gas systems located in 36 states. Publicly-owned gas systems are not-for-profit, retail distribution entities owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution facilities. Public gas systems range in size from the Philadelphia Gas Works which serves approximately 500,000 customers to the city of Freedom, Oklahoma which serves 12 customers.

Public gas systems are an important part of their community. Our members' employees live in the communities they serve and are accountable to local officials (and their friends and neighbors). Public gas systems are generally regulated by their consumer-owners through locally elected governing boards or appointed officials. However, when it comes to pipeline safety, nearly all of our members are regulated by their respective state's pipeline safety office.

All of our members must comply in the same manner as investor- and privately-owned utilities with pipeline safety regulations issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA).

While the manner of safety regulation may be the same, one major difference between the average investor-owned utility and the average public gas system is size: in the number of customers served and employees. Approximately half of the 1,000 public gas systems have 5 employees or less. As a result, regulations and rules may have a significantly greater impact upon a small public gas system than upon a larger system serving hundreds of thousands or millions of customers with several hundred or even thousands of employees and an in-house engineering staff.

Safety is the number one issue for public gas systems. No other issue rises to the level of safety for the local distribution company (LDC) providing natural gas service to its consumers. Gas utilities are the final step in moving natural gas from the production field to the homeowner or business. As such, our members' commitment to safety is second to none and they remain focused on providing safe and reliable service to their customers. A key part of safety is education and public awareness.

Education and Public Awareness

In the Pipeline Safety Improvement Act of 2002, Congress encouraged DOT to issue standards prescribing the elements of an effective public education program. APGA participated in and

supported the development of American Petroleum Institute Recommended Practice 1162 which specifies requirements for an effective pipeline public awareness program. In 2006, APGA supported the adoption of RP 1162 by PHMSA as mandatory public awareness regulations and has developed programs to assist member utilities to comply with the rule and to gauge the effectiveness of gas safety educational efforts. APGA is participating in the revision of RP 1162, which is nearing completion.

Even before there were federal pipeline safety regulations public gas systems conducted public awareness programs. Utilities add odorant to the gas to give it its distinctive smell so that people can smell it at one fifth of its lower flammable limit. Educating the public so that the public recognizes a gas odor and calls the utility if they smell gas is a critical component of each utility's safety program. Another critical component is educating the public about the existence of buried gas lines in its community and the importance of notifying the one-call center to have lines marked before digging.

A public gas utility's public awareness issues are different from those of interstate liquid or natural gas pipeline operators. Unlike some liquid pipelines, natural gas utilities transport just a single product, natural gas, so our messages about recognizing and reacting to a possible leak are straightforward. In addition, LDC lines bring natural gas directly into the homes and businesses in the communities we serve, so our product is something that many in the public encounter in their daily lives. People may not expect there to be oil pipelines or gas transmission pipelines in their neighborhood, but they do know that there are buried gas lines, especially if they have gas service in their home. In 2007, APGA polled nearly 200,000 randomly selected people in towns

and cities served by public gas systems. Over 85 percent were aware that buried gas lines ran through their community and that they should call before digging. And nearly 97 percent believed that they have adequate information about natural gas safety such as how to recognize a leak and what they should do if they smell gas in the home. This is even more impressive because nearly half of the people polled were not even gas customers. Even before the new regulations took effect these results show that public gas utilities were doing a good job getting the gas safety message to the public.

APGA also assisted its members to comply with the new requirements. In 2006, APGA developed a model public awareness plan that it made available free to members. The APGA website contains samples of public awareness materials that members can download and modify for their own use. APGA also conducts public awareness surveys for participating members. It is called the APGA Gas Overall Awareness Level (GOAL) program and it calls a random sample of customers and non-customers in the service territory of participating utilities. We are conducting our fifth year of surveys, even though the regulations did not require surveys to be completed until last year.

Public gas systems had effective public awareness programs before these new rules took effect, they have effective public awareness programs now and APGA believes the current programs are adequate to ensure public awareness of natural gas safety into the future.

Reauthorization

As the Committee considers legislation to reauthorize the Pipeline Safety Act, APGA wants to communicate its support for reasonable regulations to ensure that individuals who control the nation's network of distribution pipelines are provided the training and tools necessary to safely operate those systems. In this regard, over the past several years, the industry has had numerous additional requirements placed on it, e.g. the Distribution Integrity Management Program (DIMP), excess flow valves (EFVs), control room management, operator qualification, public awareness and more. Many APGA members are in the process of working to comply with the administrative burdens of these additional regulations. Given that public gas systems are non-profit systems and in many cases have limited resources, these additional regulations, while important, do impose an additional operational burden upon them. APGA urges the Committee to give great consideration before imposing any additional regulatory burdens upon LDCs through this reauthorization effort.

The Pipeline Infrastructure and Community Protection Act of 2011

APGA commends the Committee for its release of the Pipeline Infrastructure and Community Protection Act of 2011 and we appreciate this opportunity to provide comments on the legislation. APGA's comments will focus on provisions in the bill that address excess flow valves (EFVs), incident notification, pipeline infrastructure data collection and the surveying of cast iron pipelines. Our testimony also addresses user fees although we note that the bill would not change the user fee structure. APGA supports this approach. Lastly, as communicated

below, APGA supports a change in the manner in which low stress transmission lines are regulated.

Excess Flow Valves

As the Committee is aware, the Pipeline Inspection, Protection, Enforcement and Safety Act of 2006 (PIPES Act) included a provision requiring operators to install excess flow valves on new and replaced single residential service that operates year around at or above 10 pound-force per square inch gauge. Exceptions are provided if EFVs are not available, if it is known there are contaminants in the system that would cause the EFV to fail or if it is known that there are liquids in the system. Prior to this installation requirement, there was a customer notification rule in place that required gas systems to make their customers aware of the availability of EFVs and to install an EFV if the customer was willing to pay installation costs. It was limited to new and renewed services because EFVs are installed underground where the "service line" to a residence connects to the gas main. If a hole is already open and a new connection to the main is being installed, adding an EFV at that time costs just a fraction of what it would cost to install or replace an EFV when no other work is planned at the main-service connection.

Each EFV has a preset closure flow rate. Once installed on a service line, it will prevent gas from flowing at any flow rate higher than its preset closure flow rate. There is no way short of replacing the EFV to change its closure flow rate. This is typically not an issue with EFVs on residential service lines since the gas demand to a residence does not typically change

drastically. A residence will have a relatively constant and predictable gas demand over its lifetime so the EFV can be sized accordingly.

APGA is greatly concerned about Section 6 of the legislation which would expand EFV requirements to "multifamily facilities and small commercial facilities." A commercial building, unlike a residential unit, may experience huge changes in gas demand as tenants in the space move in and out. For example, a space in a strip mall that today is occupied by a shoe store could be converted to a restaurant or bakery tomorrow. The gas demand could double or triple from such a change. That could require replacing the meter, regulator and EFV. Since the first two items are above ground, replacement is relatively inexpensive. However, the EFV is buried and replacing it would likely be very costly, often hundreds of times the initial cost of the EFV. To address this problem, an operator could install a grossly oversized EFV with closure flow at or near the free flow limits of the service line. However, a valve so oversized would probably not close even if the line were ruptured, defeating the purpose of having an EFV on the line in the first place.

The potential costs of a false closure of the EFV can be significantly greater for a commercial customer than a residence. A commercial customer could experience substantial business losses in addition to the inconvenience of no heat or hot water. An evening's loss of business to a restaurant could run into the thousands of dollars.

The industry has experience with EFVs designed for typical flow rates to single-family residences, but has little or no experience with EFVs designed for the higher flow rates that

would exist at multi-family residences. The time and resources to restore service after a false closure of an EFV to a multi-family residence would be many times more than if the same problem occurred at a single residence.

PHMSA has established a working group of government, industry and public experts to study the issues related to installing large volume EFVs on other than single residential services. We encourage Congress to allow this stakeholder working group to proceed towards making specific recommendations on this issue.

Incident Notification

The Pipeline Infrastructure and Community Protection Act requires an owner or operator of a pipeline facility to provide telephonic notice to the National Response Center (NRC) within a maximum of one hour following discovery of a release of a hazardous liquid, substance or gas resulting in an incident. Current rules require notification at the earliest practicable moment following discovery, which in practice has meant within two hours of discovering an incident.

APGA strongly supports prompt notification of incidents as defined under the legislation, but has concerns with the practical implementation of the one hour timeframe for notification and its potential impact on the NRC and the operators. Specifically, the one hour notification is extremely difficult to adhere to given the steps necessary to ascertain the status of a leak. Gas distribution operators cannot "see" the effects of a pipeline incident (as a loss of flow or pressure) from their gas control rooms (note: most LDCs do not even have a control room).

Moreover, upon receiving a call notifying the operator of a possible gas leak, the appropriate response is to send a person to investigate. The majority of gas leak calls turn out to be no leak – there were other odors mistaken for gas. If a gas leak is found, the first responder's duty is to protect people and property first, by determining the extent of the leak and evacuating people from the hazard area. The next step is to bring the leak under control, which may require additional personnel and equipment.

In short, the practical implications of all the steps required of operators makes a one hour notification almost impossible to achieve, especially in light of the fact that protecting people and property is of a higher priority than notification. This is particularly true for the approximately 500 public gas systems that have less than 5 employees, one of which would be diverted from making the situation safe to filing the report with the NRC.

If the one hour timeline were required, the implications of this change for the NRC are also troubling. Operators would likely be forced to make an initial report to the NRC to meet the one hour deadline often without the opportunity to make a complete assessment of the severity of the incident. Then an operator would be forced to deem the incident to fall into one of the undefined categories "small", "medium", etc which may mean very different things to operators of different sizes and make an initial report. An incomplete assessment of the incident's severity leaves the NRC with information that is of questionable value at best. Moreover, the operator will have to resubmit information to the NRC to provide more accurate information once it becomes available.

It is also important to understand what happens when the NRC receives a report of a possible gas distribution incident – nothing. There is no government gas distribution emergency response team dispatched to assist with the cleanup. There is no spill to clean up.

APGA submits to Congress that the current timeframe which includes a two-hour maximum for notification of an incident provides ample time to take the steps required to provide the NRC with useful information for distribution incidents, while also ensuring that the highest priority of protecting people and property is observed.

Pipeline Infrastructure Data Collection

The Pipeline Infrastructure and Community Protection Act mandates that additional data collection requirements on pipeline owners/operators including "Any other geospatial or technical data, including design and material specifications of currently regulated pipelines, that the Secretary determines is necessary."

Congress should recognize that the term "currently regulated pipeline" as used in pipeline safety regulations includes many different types of pipelines with vastly different resources and complexity. "Pipelines" includes major interstate liquid and gas pipelines, but also the distribution piping of Freedom, OK serving 12 gas customers. It includes mobile home parks and garden apartments that may own a few hundred feet of gas lines. APGA doubts that PHMSA has the resources or the desire to collect and review design and material specifications from

thousands of small distribution systems and mobile home parks. The law should be more specific about what types of "currently regulated pipelines" will be required to submit data to PHMSA.

APGA is concerned that the collection of geospatial or technical data could prove to be a significant cost burden for some public gas systems, particularly those that may not have the geospatial or technical data available that is specified by the Act. These public gas systems would be forced to hire consultants to collect the required data, potentially cost tens of thousands if not hundreds of thousands of dollars depending upon the information needed. Additional costs in that range would constitute an extraordinary burden for many of our members. It is important to note that ultimately, these costs will be shouldered by consumers around the country who are already struggling with a weak economy and other significant energy costs.

APGA submits that geospatial and technical data collection by the Secretary should be limited to operators which are already in possession of the data required. This would obviate the need for all operators, regardless of whether or not an incident occurs, to incur the expense of collecting these types of data.

Survey of Cast Iron Gas Pipelines

Section 9 of the draft legislation would require the Department of Transportation to conduct a biannual follow-up survey on the operator replacement of cast iron pipe. Given that gas systems are in the process of implementing procedures to comply with DIMP, APGA is concerned that

this provision may preempt the operator risk analysis required under DIMP. Under DIMP, each operator is required to individually rank and mitigate their risk. APGA is concerned that this survey, and subsequent follow-up, may send a message to gas systems that the replacement of other, potentially higher risk main is less of a priority than the replacement of cast iron.

APGA is concerned that twice a year would be too short of a time and it may lead to misleading data. For example, a system could have installed ten miles of new main and nearly completed the replacement services in a six month period, but may have not yet abandoned the cast iron main and as a result there would be no "visible" progress on the goal in terms of a reduction in the cast iron footage. Operators already annually report to PHMSA cast iron and other piping mileage in the Distribution Annual Report (Form 7100-1.1). Cast iron replacement programs do not change so drastically month to month that a biannual report would provide any better insight than the current annual report.

Funding of User Fees

As originally established, user fees for funding PHMSA are to be collected by natural gas transmission operators from their downstream customers. This has been the approach used since the inception of PHMSA user fees, and it has worked well since it minimizes the points of contact between the government and those from which it is collecting the user fees. These user fees are treated by the Federal Energy Regulatory Commission as part of the transmission operators' legitimate cost of service and hence includible in the transmission operators' rates. The thousands of customers of each transmission operator, including local distribution

companies (LDCs), reimburse the transmission operators for these user fees through the rates they pay for the transmission service and in the case of LDCs pass those costs through to their end-use consumers. This historical approach for assessing and collecting user fees is logical and straight-forward in that the money collected by the relative handful of transmission operators is passed on to PHMSA.

The logical question is why anyone would want to change the current streamlined approach to something obviously more complicated and less efficient from the Government's point of view and the customers'. The answer, very simply, is that many pipelines in this country are substantially over-recovering their costs of service, i.e., their rates are no longer just and reasonable.[1] Thus, these pipelines do not want to file for pass-through of the PHMSA costs because such a filing would reveal that these pipelines should reduce, not increase, their rates in order to conform with the Natural Gas Act (NGA) just and reasonable standard. Pipelines would prefer to either move the PHMSA user fee downstream or initiate a tracker mechanism whereby they are shielded from a rate review under the NGA just and reasonable standard.

APGA supports the current approach, which has worked well over the years and commends the Committee for not including within the legislation a change in the user-fee structure. APGA is strongly opposed to any changes in the current approach that would either shift the user fees

[1] **NGSA 2005-2009 Pipeline Cost Recovery Report (issued February, 2010)**. The Commission in 2009 and 2010 initiated five Section 5 complaint proceedings against pipelines which, on the basis of the information filed by them each year in FERC Form 2 reports, were substantially over-recovering their costs of service. *See Northern Natural Gas Co.*, 129 FERC ¶ 61,159 at PP 5-6 (2009); *Natural Gas Pipeline Co. of America,* 129 FERC ¶61,158 at PP 5-7 (2009); *Great Lakes Gas Transmission Co.*, 129 FERC ¶61,160 at PP 5-6 (2009); *Kinder Morgan Interstate Gas Transmission,* 133 FERC ¶ 61,157 at PP 6-8 (2010); *Ozark Gas Transmission,* 133 FERC ¶ 61,158 at PP 6-8 (2010).

collection point downstream to the LDCs and other pipeline customers or permit the pipelines to bypass the NGA just and reasonable standard through a tracker mechanism. The Federal Energy Regulatory Commission has never turned down a request to include pipeline safety user fees in transportation rates charged by interstate pipelines, so the *only* risk to the pipelines is that, despite being permitted to include the PHMSA user fees as a legitimate operation and maintenance cost, their rates will be reduced because they are otherwise over-recovering their overall just and reasonable cost of service. Such pipelines should not be permitted to "track" costs that simply ensure their continuing over-recovery.

In brief, Congress should not tamper with the existing collection mechanism by cobbling together statutory relief for a non-problem, which relief can only exacerbate pipeline over-recovery and harm consumers by inappropriately raising their rates. Times are tough enough for American consumers without imposing on them extra costs for which there is no rational basis.

Integrity Management of Low Stress Transmission Lines

Currently, low stress transmission lines (a line operating below 30 % of the specified minimum yield stress) operated by distribution systems are regulated under the Transmission Integrity Management Program (TIMP). It is APGA's position that those pipelines should be regulated under the Distribution Integrity Management Program (DIMP). The benefit of handling this under DIMP is that TIMP focuses on finding mainly corrosion and mechanical damage problems. The DIMP rule addresses these threats but also requires distribution operators to

consider other threats to integrity including excavation, natural forces, incorrect operations and more. When a high stress line corrodes, it can suddenly rupture, whereas a low stress line would just start leaking, and the leak would get progressively worse over time. The utility has time to find the leak through ongoing leak surveys and patrols and fix it before it threatens public safety. PHMSA annual report and incident data show that corrosion leaks are by far the least likely of any cause to result in a reportable incident. Since the big issue with distribution is 3rd party damage, all the TIMP-mandated inspections for corrosion are of questionable benefit. Allowing low stress transmission lines to be regulated under DIMP would require operators to consider the actual threats to these pipelines, enhancing public safety and reducing a regulatory burden which carries no commensurate benefit.

Conclusion

Natural gas is critical to our economy, and millions of consumers depend on natural gas every day to meet their daily needs. It is critical that they receive their natural gas through safe, affordable and reliable delivery by their LDC. Public gas systems are proud of their safety record and safety has been, and will continue to be, their top priority. We look forward to working with the Committee towards reauthorization of the Pipeline Safety Act.