

**BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES**

**COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
HIGHWAY, TRANSIT, AND PIPELINES SUBCOMMITTEE**

**TESTIMONY OF THE HONORABLE DONALD L. MASON
COMMISSIONER, PUBLIC UTILITIES COMMISSION OF OHIO
ON BEHALF OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

ON

“Pipeline Safety”

March 16, 2006



**National Association of
Regulatory Utility Commissioners
1101 Vermont Ave, N.W., Suite 200
Washington, D.C. 20005
Telephone (202) 898-2200, Facsimile (202) 898-2213
Internet Home Page <http://www.naruc.org>**

Good Afternoon Mr. Chairman and Members of the Subcommittee.

I am Donald L. Mason, a commissioner at the Public Utilities Commission of Ohio (PUCO). I have served in that capacity since 1998. I also serve as the Chair of the Committee on Gas for the National Association of Regulatory Utility Commissioners (NARUC). As Chairman of the NARUC Committee that focuses on some of the issues that are the subject of today's hearing, I am testifying today on behalf of that organization. In addition, my testimony reflects my own views and those of the PUCO as well as the comments of the National Association of Pipeline Safety Representatives (NAPSR). On behalf of NARUC, NAPSR and the PUCO, I very much appreciate the opportunity to appear before you this morning.

NARUC is a quasi-governmental, non-profit organization founded in 1889. Its membership includes the State public utility commissions serving all States and territories. NARUC's mission is to serve the public interest by improving the quality and effectiveness of public utility regulation. NARUC's members regulate the retail rates and services of electric, gas, water, and telephone utilities. We are obligated under the laws of our respective States to ensure the establishment and maintenance of such utility services as may be required by the public convenience and necessity and to ensure that such services are provided under rates and subject to terms and conditions of service that are just, reasonable, and non-discriminatory. NAPSR is a non-profit organization of state pipeline safety directors, managers, inspectors and technical personnel who serve to support, encourage, develop and enhance pipeline safety.

This morning I will focus on what NARUC believes are the five main issues facing the States with regard to the pipeline safety program.

1. Grant Funding Must Increase To Meet Resource Requirements Of State Pipeline Safety Programs

State pipeline safety agencies are closely connected to the ultimate consumers of natural gas and liquid hydrocarbons through the oversight of facilities that distribute products near or at the end of the transportation supply chain. These consumers ultimately pay the Pipeline Hazardous Material Safety Administration (PHMSA) pipeline safety user fees that are passed on by natural gas and hazardous liquid transmission companies. State pipeline safety program funding is heavily dependent upon PHMSA's proper sharing of these user fees. State pipeline safety programs represent approximately 80 percent of the federal/State inspector work force that oversees pipelines nationwide. Without adequate funding, States will not be able to conduct the required inspections of the existing pipeline facilities or new pipeline construction projects, and encourage compliance with new and existing safety regulations. Grant funds are an effective way to leverage resources and increase total inspection capability since States match or exceed federal funding provided for pipeline safety.

However, federal base grants to States who administer the gas and liquid pipeline safety program are not keeping up with their actual expenditures. The Pipeline Safety Act provides for States to receive a federal grant up to 50 percent of actual expenses for their safety programs. For example, in 2005 the States estimated that the total cost of their portion of the program to be approximately \$36.2 million. Due to the 50 percent limit imposed in the Pipeline Safety Act, the

most the States can be granted to cover their costs was \$18.1 million. However, the actual base funding grant level that was given to the States was \$15.9 million.

State pipeline safety programs have jurisdiction over 222,000 miles of natural gas & liquid transmission and gathering lines, 1.15 million miles of natural gas distribution pipelines and 764,000 miles of service lines. Therefore, States are responsible for over 2.14 million of the total 2.41 million miles of pipe (PHMSA oversees 272,000 miles), which represents 89 percent of the total pipelines in the United States. However, while the States are responsible for 89 percent of the pipelines, in FY 2005 they only received 28% of the total dollars appropriated by Congress for pipeline safety. Unless Congress recognizes the need for additional State inspection resources this funding shortfall will continue to widen in the future, jeopardizing the States' working relationship and partnership agreement with PHMSA creating a potential public safety concern.

The responsibility for State pipeline safety programs is carried out by approximately 325 qualified engineers and inspectors who represent more than 80 percent of the State/federal inspection workforce that are currently inspecting natural gas and liquid pipeline operators on a daily basis.

State inspectors are the "first line of defense" at the community level to promote pipeline safety, underground utility damage prevention, public education and awareness regarding pipelines, interface with emergency management agencies on security and reliable energy issues. Daily activities include inspection of existing facilities, renewal or new pipeline construction projects, review of safety maintenance and operations records, drug and alcohol records, compliance and enforcement actions, training and education programs for operator and public, and accident investigation of reportable incidents.

State inspectors are required to attend nine mandatory training and computer based training (CBT) courses provided by PHMSA's Transportation Safety Institute within three years of employment with a State agency and refresher training required within 7 years of their attendance to the course. These one week courses already impact State expenditures and resources for the program, however, PHMSA has recently added two additional courses that gas safety engineers must attend in order to act as their agent and participate in integrity management audits. We believe all the courses are positive. It seems, however, the federal government is providing additional mandates while not funding the program at a level commensurate with the existing responsibilities, let alone any additional requirements.

2. Congress Should Increase The Current \$1 Million Damage Prevention Grant To States To \$2.5 Million

For several years now, Congress has funded a \$1 million grant to assist all States with their existing excavation damage prevention programs. Every year, PHMSA receives more than \$2.4 million in requests from States to support and continue their existing prevention efforts. NARUC is respectfully requesting that Congress increase this very important grant to at least \$2.5 million to better support existing damage prevention efforts.

One-Call grants have assisted State pipeline safety personnel in their communities to educate local officials, excavators, utilities and the public on the importance of preventing damage to all underground facilities. States support and participate in the efforts of the Common Ground Alliance through committees and assistance in the development of best practices and educational programs. The One-Call grant to States provides an opportunity for an agency to personalize the message on damage prevention and encourage changes in their underground utility damage prevention law to meet federal guidelines. In March 2005, with NARUC's strong support, the Federal Communications Commission designated the 811 number as the national abbreviated dialing code for One-Call systems to comply with the Pipeline Safety Act of 2002. The three-digit number 811 will be easy to remember and use by excavators to help reduce damages to all underground facilities. States are approving applications submitted to their agencies by the local One-Call organization for the assignment of the 811 number. The States will need funds to help promote the awareness of this service. State programs requested \$2.2 million in One-Call grant funds during the last application period.

3. Distribution Integrity Management Program Should Provide Additional Safety Improvement.

NARUC is of the opinion that implementing gas distribution integrity management consistent with the findings and conclusions contained in the "Integrity Management for Gas Distribution" report released in December of 2005 and prepared by representatives from NARUC, other government agencies, industry, and public joint work/study groups should provide additional safety improvement. Specifically, this study found that the most useful option for implementing distribution integrity management requirements is a high-level flexible federal regulation in conjunction with implementation guidance developed by the government and industry.

The report finds that a high-level flexible rule requiring distribution operators to formally develop and implement integrity management plans that address the key elements outlined by Department of Transportation Inspector General; understand the infrastructure, identify and characterize the threats, and determine how best to manage the known risks, should be sufficient to address distribution safety enhancements. NARUC members participated in each of the four task teams in the development of the report and on going development of guidance material to assist operators, small and large, in compliance with the proposed rule.

This report was too lengthy to be included in my testimony, however it can be found at:

http://www.cyclac.com/opsiswc/docs/S8/P0068/DIMP_Phase1Report_Final.pdf

4. NARUC Supports 80% Grant Funding For Pipeline Safety Programs That Enforce Excavation Damage Prevention

NARUC recommends that the present 50 percent reimbursement ceiling contained in federal statute be changed to 80 percent. A State pipeline safety program's cost to enforce damage prevention laws is not presently considered to be allowable costs for the Base Grant. As noted in the Integrity Management for Gas Distribution Report to PHMSA, excavation damage to pipelines was considerably less in States where State pipeline safety programs enforced damage

prevention laws. States should be encouraged to place pipeline damage prevention responsibilities within State pipeline safety programs. The cost associated with implementing effective damage prevention programs along with additional resources needed to carry out the core pipeline safety programs justifies the 80 percent funding. This funding level is consistent with other non-pipeline safety grants to States administered by DOT. Providing cost reimbursement of 80 percent to State pipeline programs will allow States to accomplish their pipeline safety responsibilities and provide an important incentive for States to implement effective damage prevention programs, distribution integrity inspections and other mandated programs thus improving the safety of the nation's gas distribution infrastructure.

In the Integrity Management for Gas Distribution Report, the Excavation Damage Prevention Task Group found excavation damage by far poses the single greatest threat to distribution system integrity and is thus the most significant opportunity for distribution pipeline safety improvements. Reducing the threat of excavation damage requires affecting the behavior of persons not subject to the jurisdiction of pipeline safety authorities (i.e. excavators). Federal legislation is needed to support the development and implementation of effective comprehensive State damage prevention programs. Data from the Task Group report over the last 5 years has demonstrated that States with comprehensive damage prevention programs that include effective enforcement experience results in substantially lower rates of excavation damage to pipeline facilities than programs that do not. The lower rate directly translates to a substantially lower risk of serious incidents, accidents, and consequences resulting from excavation damage to pipelines. PHMSA's reaction to the report recommendations has been positive, including the view that the agency should consider providing seed funding to States as an incentive to develop stronger damage prevention programs. The program would be a separate grant fund, apart from funding already being provided under the matching grants or One-Call programs and may be entitled, Excavation Damage Prevention Grant. Once the State takes steps to implement the program, which would be similar to the damage prevention enforcement programs in Virginia and four other States, it would be granted additional funds via the matching grants program. Obviously, the new programs will need funding up to 80% at the beginning for staffing levels to respond to calls and investigations of damages by outside parties. Such funding may be reduced as outside damages are lowered by enforcement. The funds should be provided to State agencies having experience and knowledge in underground utility damage prevention for pipeline safety. The Task Group reviewed several approaches to provide incentives for this program and developed proposed legislation which I have included in this testimony as an attachment.

5. Federally Mandated Installation Of Excess Flow Valves (EFVs) On Service Lines To Customers Is Not Necessary

A survey performed at the request of NARUC by the National Regulatory Research Institute in July of 2005 supports the majority of State regulatory agencies which are satisfied that operators are installing them where they can be effective. NARUC passed resolutions encouraging federal agencies and legislators to recognize that State officials are well positioned to have knowledge of the operational conditions and circumstances for the installation of these devices and understand that a decision whether or not to install the devices is best determined by the affected State regulatory body.

Distribution Integrity Management Program steering committee members submitted formal comments to PHSMA consistent with other organizations on the installation of these valves. Operational experience verifies that of the thousands of EFVs installed in the past, very few have had false activations. When properly specified and installed, EFVs can reliably interrupt the gas flow under certain conditions when there is an excess flow in the service line. These valves are primarily installed in new and replaced service lines on single family residences where operating pressure is greater than 10 psig. Addressing safety requires an overall approach that allows consideration of all tools and technologies for the various threats to distribution pipelines. EFVs can be used to address the threat of excavation damage for single family residential lines. There may be other tools that can equally or more effectively address this same threat. Therefore, rather than a blanket mandate for installation of EFVs, a provision of Distribution Integrity Management should state that each operator consider the use of EFVs on its own operating system.

Mr. Chairman and members of the Subcommittee, this concludes my remarks. Thank you again for the opportunity to appear before you today and share these views on a most important issue. I will be happy to address any question you may have.

ATTACHMENT

Draft Federal Legislation

§ 60105. State pipeline safety program certifications

Subsection (b) of section 60105 is amended by revising paragraph (b)(4) to read as follows:

“(4) has or will adopt, within 36 months of [the date of enactment of this amendment], a program designed to prevent damage by excavation, demolition, tunneling, or construction activity to the pipeline facilities to which the certification applies that meets the requirements of section 601XX.”

- (i) If a state fails to develop and implement an excavation damage prevention program in accordance with item (4), above, the Secretary shall take any action deemed appropriate to ensure an effective damage prevention program within that state.
- (ii) Annually, if a state can demonstrate to the Secretary that it has taken all reasonable actions to implement such a program without success, funding for the remainder of its pipeline safety program shall not be affected.

§ 601XX. State damage prevention programs

(a) Minimum standards. In order to qualify for a grant under this section, each State authority (including a municipality if the agreement applies to intrastate gas pipeline transportation) having an annual certification in accordance with section 60105 or an agreement in accordance with section 60106 shall have an effective damage prevention program that, at a minimum, includes the following elements:

- (1) Effective communication between operators and excavators- Each state program shall provide for appropriate participation by operators, excavators, and other stakeholders in the development and implementation of methods for establishing and maintaining effective communications between stakeholders from receipt of an excavation notification until successful completion of the excavation, as appropriate.
- (2) Fostering support and partnership of stakeholders- Each state program shall include a process for fostering and ensuring the support and partnership of stakeholders including excavators, operators, locators, designers, and local government in all phases of the program.
- (3) Operator’s use of performance measures – Each state program shall include a process for reviewing the adequacy of a pipeline operator’s internal performance measures regarding persons performing locating services and quality assurance programs.
- (4) Partnership in employee training – Each state program shall provide for appropriate participation by operators, excavators, and other stakeholders in the

development and implementation of effective employee training programs to ensure that operators, the one-call center, the enforcing agency and the excavators have partnered to design and implement training for operators,' excavators' and locators' employees.

(5) Partnership in public education – Each state program shall include a process for fostering and ensuring active participation by all stakeholders in public education for damage prevention activities.

(6) Dispute resolution process – Each state program shall include a process for resolving disputes that defines the state authority's role as a partner and facilitator to resolve issues.

(7) Fair and consistent enforcement of the law- Each state program shall provide for the enforcement of its damage prevention laws and regulations for all aspects of the excavation process including public education. The enforcement program must include the use of civil penalties for violations assessable by the appropriate state authority.

(8) Use of technology to improve all parts of the process – Each state program shall include a process for fostering and promoting the use, by all appropriate stakeholders, of improving technologies that may enhance communications, locate capability, and performance tracking.

(9) Analysis of data to continually evaluate/improve program effectiveness – Each state program shall include a process for review and analysis of the effectiveness of each program element and include a process for implementing improvements identified by such program reviews.

(b) Application. If a State authority files an application for a grant under this section not later than September 30 of a calendar year, the Secretary of Transportation shall review that State's damage prevention program to determine its effectiveness. For programs determined to be effective, the Secretary shall pay 80 percent of the cost of the personnel, equipment, and activities the authority reasonably requires during the next calendar year to carry out an effective damage prevention enforcement program as defined in (a) of this section.

(c) Authorization of Appropriations. There is authorized to be appropriated to the Secretary for carrying out this section [the dollar amount equal to the 80% referenced in (b) above] for each of the fiscal years 2006 through 2010. Such funds shall remain available until expended. Any funds appropriated to carry out this section shall be derived from general revenues and shall not be derived from user fees collected under section 60301.