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FOR THE

SUBCOMMITTEE ON ENERGY
OF THE
COMMITTEE ON ENERGY and COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ON

Legislative Solutions to Make Our Nation's Pipelines Safer

June 19, 2019

Good morning Chairman Rush, Ranking Member Upton, and members of the Subcommittee. Thank you for inviting me to speak today on the important subject of pipeline safety. My name is Chuck Lesniak and I am speaking today on behalf of the Pipeline Safety Trust. Up until my recent retirement I was the Environmental Officer for the City of Austin, Texas where I worked for over twenty-five years. I am also a member of the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Technical Hazardous Liquid Pipeline Safety Standard Committee, and was a member of PHMSA's Pipeline and Informed Planning Alliance. In all of these positions I have worked with the Pipeline Safety Trust on various pipeline safety initiatives and issues, so I am honored to provide their testimony today.

The Pipeline Safety Trust came into being after a pipeline disaster twenty years ago - the 1999 Olympic Pipeline tragedy in Bellingham, Washington that left three young people dead, wiped out every living thing in a beautiful salmon stream, and caused millions of dollars of economic disruption. While prosecuting that incident the U.S. Justice Department was so shocked at the way the pipeline company had operated and maintained their pipeline, and equally shocked at the lack of oversight from federal regulators, that they asked the federal courts to set aside money from the settlement of that case to create the Pipeline Safety Trust as an independent national watchdog organization over both the industry and the regulators.

Today our testimony will focus on three recently proposed bills in this order:

- The Safer Pipelines Act of 2019,
- The Leonel Rondon Pipeline Safety Act, and
- The Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2019

The three bills we're here to discuss today take aim at several of the shortcomings in current pipeline regulation.

Safer Pipelines Act of 2019 (discussion draft)

Section 2. Authorization of Appropriations

The Pipeline Safety Trust supports the larger appropriations throughout this bill. PHMSA is chronically underfunded given the vast network of pipelines in our country and the risk they represent to public safety and the environment. While in past reauthorizations PHMSA has been given more money for inspectors, this additional money will hopefully provide an opportunity to also help cover the needed costs of support staff to better analyze data, review risks, and support PHMSA's regulatory and enforcement functions. These increased appropriations will also hopefully close the gap between the amount PHMSA is allowed to fund state pipeline safety program and the amount they actually fund state programs. We also strongly support increasing the total amount of support to the Pipeline Safety Information Grants to Communities to

$2 million per year and removing the prohibition on these funds coming from user fees. These local grants help communities develop tools that make them more aware of pipelines and better understand how to protect their communities and the pipelines in them.

Section 3. Definitions

The proposed changes will bring under regulation many of the hundreds of thousands of miles of currently entirely unregulated gathering lines running near homes and businesses in more rural areas. PHMSA estimates there to be over 435,000 miles of these pipelines and as production and gathering continue to increase, it's important that these rural pipelines fall under minimum regulations to keep communities safe, and so regulators know when and why they fail, and that they participate in One-call systems. These higher stress, higher pressure lines should properly be subject to safety regulations like transmission lines, because they present similar risks and they are often indistinguishable from a transmission line, except for the designation given by an operator.

One other important change that we would suggest is that regulators and communities need to know where these pipelines are located. Currently the statute in Section 60132 exempts gathering lines from the National Pipeline Mapping System, so there is no way to know where these lines, many of which are functionally the same as transmission lines, are actually located. Because these lines present similar public safety risks as transmission pipelines, this exemption should be corrected. That can be easily done by amending Section 60132 (a) by changing “gathering lines” to “non-regulated gathering lines.”

Section 4. Purpose and General Authority

Cost-Benefit Requirements Under 49 USC § 60102

The years since 2010 found us too often examining the failures that led to major pipeline incidents: Marshall, Michigan; San Bruno, California; Allentown, Pennsylvania; Sissonville, West Virginia; Harlem, New York; Mayflower, Arkansas; two spills into the Yellowstone River, oil flowing into the ocean off Santa Barbara, and too many more. Against that backdrop of incidents, Congressional directives, NTSB and GAO recommendations, these years also provided a perfect example of a broken regulatory process that left PHMSA incapable of producing a single major new safety rule. There are many reasons the process is not working but chief among them is the unique and onerous cost-benefit requirements that PHMSA finds itself saddled with.

In 1996, a concerted Congressional effort was made to insert cost-benefit analysis requirements into rulemaking requirements under a whole host of environmental protection and health statutes, presumably

as a way to reduce regulatory burden and codify the requirements for regulatory cost benefit analyses put in place by Presidents Reagan and Clinton in Executive Orders. Those Congressional efforts ultimately fell short of wide spread success because so many members of Congress realized how such measures in the statute would provide a well funded industry a strong litigation hook that would make it too easy to successfully challenge new regulations and nearly impossible to adequately protect people's health and safety. The 1996 reauthorization of the pipeline safety program, based solely on timing, represents the only health and safety or environmental protection statute where such an explicit directive to an administrative agency to base regulation of risk on a cost-benefit test was actually inserted into statute.

PHMSA rulemaking is therefore subject to two sets of cost-benefit requirements - one under the Pipeline Safety Act and one under the Executive Order that requires an economic analysis of every major rule reviewed by OMB before being published as a proposed rule and subject to comment. We **strongly support** this bill's efforts to put PHMSA's rulemaking on an even playing field with all other agencies and industries by amending 49 USC § 60102 to eliminate references to the risk assessment/cost-benefit analysis. PHMSA would remain subject to the requirements of the Executive Orders requiring a cost benefit analysis of major rules proposed by any agency, and the requirements for transparency in rulemaking provided by the existing statute and procedures.

We also support the second provision in this section which will require that safety-related condition reports made by operators be provided to state officials, local first responders and on scene coordinators at the same time they are made available to PHMSA.

Section 5 Risk Analysis and Integrity Management Programs

a) **Phaseout of Direct Assessments** - The Trust supports the intent of this provision to require PHMSA to plan for a phaseout of reliance by operators on direct assessment as a means of determining the continued fitness for service of its transmission pipeline facilities. This provision mirrors, and will hopefully accomplish a similar NTSB recommendation. Until it is phased out entirely, Direct Assessment should be used only for external corrosion threats where a segment has complete records, and other integrity assessments should be required for any other threat to the segment. Where records are missing, operators should not rely on direct assessment alone, and should be required to use a pressure test to determine the remaining strength of the segment. It is our understanding that there are still hundreds of miles of gas transmission pipeline, primarily intrastate pipelines, that the self implementing language in this section may force to be replaced or refitted to allow internal inline inspections. We think such replacement is needed, but do not know if it can be accomplished in a safe and efficient manner in a two year timeframe as required in this section. It is

our suggestion that this self-implementing two year phaseout also provides an opportunity for individual operators to make a case through PHMSA's Special Permit system to make a case for why they can not accomplish this within that period, or why direct assessment is important on their particular pipeline.

(b) **Automatic Spill Detection and Shut-Off Valves**: It's been nineteen years since Congress was debating a requirement for remote or automatic shutoff valves on natural gas pipelines in the wake of the Edison, NJ accident and the two and a half hours it took to shut off the flow of gas that fed the fireball due to the lack of a remotely controlled shut off valve. It's been nearly 9 years since the 2010 San Bruno tragedy where it took the pipeline operator over an hour and a half to drive to and close a manual valve and the NTSB recommended that PHMSA "***Amend Title 49 Code of Federal Regulations 192.935(c) to directly require that automatic shutoff valves or remote control valves in high consequence areas and in class 3 and 4 locations be installed and spaced at intervals that consider the factors listed in that regulation."***

In the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 Congress asked the Secretary to consider within two years appropriate regulations to require the use of automatic or remote-controlled shut-off valves, or equivalent technology, on new or replaced pipelines. PHMSA did contract with Oak Ridge National Laboratory for a study of such valves. That study[1] concluded that ***"installing ASVs and RCVs in pipelines can be an effective strategy for mitigating potential consequences of unintended releases because decreasing the total volume of the release reduces overall impacts on the public and to the environment."***

In 2010 PHMSA issued an Advanced Notice of Proposed Rulemaking (ANPRM) for hazardous liquid pipelines, and then in 2011 PHMSA issued an ANPRM for gas transmission pipelines. Both ANPRMs made it clear that some change to the requirements for automatic or remote-controlled valves was being considered. Many stakeholder groups invested a significant amount of time responding to these ANPRMs. Unfortunately, years later, information regarding how PHMSA will deal with this issue in a future rulemaking has not been made available. The slowness of the rulemaking process regarding automatic and remote-controlled shut-off valves seems at odds with the public proclamations of concern and action and NTSB's recommendation.

For liquid pipelines the foot dragging is even worse. In 1992, 1996, 2002, and 2006, Congress required OPS to "survey and assess the effectiveness of emergency flow restricting devices (**including remote controlled**

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1 http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_2C1A725B08C5F72F305689E943053A96232AB200/filename/Final%20Valve_Study.pdf

valves…} to minimize product releases"[2] with the first such requirement having a deadline in 1994 (24 years ago!). Following this analysis, Congress required the then Office of Pipeline Safety to "prescribe regulations on the circumstances under which an operator of a hazardous liquid pipeline facility must use an emergency flow restricting device."[3]

OPS/PHMSA never issued a formal analysis on emergency flow restricting device (EFRD) effectiveness. Instead, in its hazardous liquid pipeline integrity management rule[4], OPS rejected the comments of the NTSB, the US Environmental Protection Agency, the Lower Colorado River Authority, the City of Austin, and the Environmental Defense Fund and chose to leave EFRD decisions up to pipeline operators after listing in the rule various criteria for operators to consider. Such an approach to EFRD use does not appear to meet Congressional intent, partly because the approach is essentially unenforceable and not protective of important environmental assets such as rivers and lakes including those not considered High Consequence Areas.

Congress needs to reiterate its previous mandates to PHMSA on EFRD use on liquid pipelines and ensure they are followed to mitigate the extent of future pipeline releases.

The Trust has been in favor of requiring leak and rupture detection and automatic or remote controlled shut-off valves in high consequence areas for many years. The 2010 failures in San Bruno, CA (natural gas) and Marshall MI (diluted bitumen) highlighted the need for these technologies to be part of every transmission system. Communities should not have to be at the mercy of evening commuter traffic or control room staff errors to know that a pipeline can be shut down without someone needing to travel to and turn a manual valve in the event of a failure. We urge you to adopt a requirement for leak detection systems and for automatic shut-off valves in High Consequence Areas for hazardous liquid pipelines. For natural gas transmission pipelines in Class 3 and 4 areas and High Consequence areas, we support requiring automatic or remotely controlled valves and leak/rupture detection technology that meets a statutorily defined standard. For both hazardous liquid and gas transmission pipelines, without requiring detection equipment to meet some standard of effectiveness, many existing computerized pipeline management systems might be considered to "automatically" identify a failure, when in fact, the public more often identifies them than operator's SCADA systems.

[2] See 49 USC 60102(j)(1).
[3] See 49 USC 60102(j)(2).
[4] See 49 CFR 195.452(i)(4).

Section 6 Community Right to Know and Emergency Preparedness

The Trust strongly supports the effort to improve engagement of operators with local emergency planning committees and other local first responders. We also support the proposed reporting requirement that would provide the public with some of the most frequently requested information about pipelines near them.

We have two recommendations to strengthen this section. First we ask that it be made clear in section 60102 (d)(3)(A) that "characteristics of the operator's pipelines" include all the information that NTSB recommended be made available to local emergency response officials in their recommendation P-11-8:

> *"Require operators of natural gas transmission and distribution pipelines and hazardous liquid pipelines to provide system-specific information about their pipeline systems to the emergency response agencies of the communities and jurisdictions in which those pipelines are located. This information should include pipe diameter, operating pressure, product transported, and potential impact radius."*

Our other suggestion on this section would be to eliminate the discretion proposed to be given to the Secretary to waive certain aspects of the reporting if the Secretary determines that the inclusion of such information would pose a risk to the security of the pipeline facility. Our experience is that given the opportunity to redact information on security grounds, the Department will use it, and this language provides little guidance that would identify how big or what kind of risk would trigger the Secretary's ability to find disclosure "would pose a risk." The possible solutions to this are either to identify and eliminate the types of information you think might pose a sufficient risk from the list of required reports, or, if there are none in the proposed list, simply eliminate the option for the Secretary to waive inclusion of any item.

Section 7 Actions by Private Persons

After the tragedy in San Bruno resulting from the failure of a PG&E pipeline and the NTSB's findings of regulatory failings at the California regulator, the City and County of San Francisco became concerned about whether there might be similar weaknesses that implicated the safety of PG&E lines in their jurisdiction. They knew that PHMSA annually certified its state partners and they challenged the adequacy of PHMSA's certification process with respect to the CPUC. The case never reached the merits, as the court found, and the 9th Circuit affirmed that without a mandamus clause in the Pipeline Safety Act, there could be no private party challenge to PHMSA's failure to do something required by the Act. This proposed provision fixes that problem and will allow private parties to seek court action to insure that PHMSA carries

out **Congressional mandates** in the Pipeline Safety Act. We strongly support its inclusion in this year's reauthorization bill.

Section 8 Civil Penalties

PHMSA's penalty authority, and the agency's implementation of that authority, results in civil penalties that are economically insignificant to operators, are significantly smaller than those imposed by some states, and are disproportionate to the harm inflicted by pipeline failures.

From 2002 through 2018, the total amount of penalties collected by PHMSA in completed civil penalty cases (from violations discovered in inspections or following incidents) is just over $56 million dollars combined.[5] In that same timeframe, the nearly *eleven thousand* reported pipeline incidents killed 249 people, injured 1041 and caused property damage approaching $8 billion dollars. [6] Congress increased PHMSA's civil penalty authority in the 2011 reauthorization up to a cap of $200,000 per violation and $2 million dollars for a related series of violations. In spite of that increase, there has not been a corresponding increase in penalties proposed or collected, suggesting that PHMSA remains reluctant to impose penalties. In fact, some dramatic incidents, like the failure and explosion of a NiSource natural gas pipeline in Sissonville WV (caused by corrosion) that destroyed a home and a section of Interstate highway, have resulted in no civil penalties at all.

Some states, notably California, have dramatically increased their use of civil penalties in the last decade, levying large fines like the one levied against PG&E following the San Bruno tragedy. The state regulator fined the utility $1.6 billion dollars for violations related to the 2010 failure in San Bruno and has since fined the utility additional millions relating to subsequent recordkeeping, reporting and other violations. These large fines are possible because the California and other state statutes do not have a limit on penalties for a related series of violations. Each day in violation is subject to another penalty.

We strongly support the proposed elimination of the cap on civil penalties for a related series of violations. While PHMSA maintains considerable discretion over when and how much to fine a pipeline company, Congress should at least remove the barriers to adequate enforcement so the agency has the ability to send a message to a company when need be. Congress should also make sure the hearing process where final fines are determined is open to the public, that notice is provided, and that associated non-security-sensitive information is also publicly available in a reasonable time. Given the continuing challenges in

[5] https://primis.phmsa.dot.gov/comm/reports/enforce/CivilPenalty_opid_0.html?nocache=9634#_TP_1_tab_3 (accessed 11/29/2018).
[6] PHMSA, All Reported Incident Trends, (accessed 11/29/2018).

complying with statutory mandates, we also urge that a deadline be imposed for the amendment of agency regulations to comply with this change.

Section 9. Criminal Penalties

Fortunately it is very rare that a pipeline operator violates the regulations in a way that would be considered criminal. The Pipeline Safety Trust, was born from one of those rare incidents where an operator's actions were proven to be so reckless as to kill members of the public and do uncounted environmental harm. In that case the U.S. Justice Department under President Bush did an outstanding job prosecuting that case, fining the company, and actually getting jail time for company employees. There have only been a handful of other incidents caused by such reckless behavior from pipeline companies since that case nearly 20 years ago, but it is important not to create barriers that make it difficult to hold companies accountable when they knowingly or recklessly ignore the laws meant to keep people safe.

The current statute that applies to pipeline safety - **Title 49 USC § 60123. Criminal Penalties –** sets an unusually high bar for holding companies accountable for criminal behavior. We ask that you align the pipeline safety rules under PHMSA with the PHMSA rules for transportation of hazardous materials and change §60123 to adopt language similar to the language from the Hazmat statute in **Title 49 USC § 5124. Criminal Penalties** ("willfully or recklessly"). The proposal in the discussion draft uses " knowingly or recklessly" and will accomplish that goal. We urge your support.

Section 10 - Maximum Allowable Operating Pressure (MAOP)

One of the many discoveries following the PG&E failure in San Bruno was the surprisingly large number of operators who do not have adequate records of the pipes they have in the ground. Without adequate records, these operators can't be certain whether their pipes are safe to operate at their current MAOPs. PHMSA has yet to issue a new rule about calculating MAOPs for these pipelines without records, which ones must be hydrotested, whether any will remain grandfathered from having testing required. This proposed provision will provide some badly needed direction to PHMSA, essentially requiring all natural gas transmission pipelines to be hydrotested, complying with the NTSB recommendation to eliminate the grandfather clause that exempts certain pre-1970 lines from being tested. We strongly support this provision.

Section 11 Direct Hire Authority

PHMSA has long had difficulty hiring inspectors and engineering staff because of the higher wages available in the private sector, among other reasons. In 2015, PHMSA sought permission for direct hire authority and

was denied by OPM. In the 2016 reauthorization, Congress requested that the Office of the Inspector General report on PHMSA's workforce management practices. The OIG report was delivered in November of 2017 and concluded that "it is not clear that this authority alone would resolve PHMSA's staffing challenge." We believe that if direct hire authority can play a part in improving PHMSA's speed of hiring inspectors and engineers, then we should support it.

HR 3139 The Leonel Rondon Pipeline Safety Act

We all watched in horror as the explosions and fires seemed to play a grim game of leapfrog throughout Lawrence, Andover and North Andover last fall. We send our deepest condolences to the family of Leonel Rondon and to the community that mourns his loss. It is a sad fact that most of the improvements in pipeline safety regulations have come following tragedies, as communities react and insist that the cause of their losses be prevented from causing more losses to other families and communities. There is so much in this bill that one would hope responsible operators were already doing: consider the threats to their systems from the presence of cast iron; have proper emergency communications plans, have a plan for over-pressure alarms, ensure their employees are properly qualified. But as with a lot of aspects of pipeline safety, the current distribution regulations give too much discretion to operators and provide too few specific prescriptions. The provisions of this bill take a step in the right direction by filling in some of those prescriptions.

Section 2. Distribution Integrity Management Program

This section mandates that operators consider the risks presented by the presence of cast iron pipes and mains and the risk of over pressuring those parts of their systems in their integrity management programs. As we earlier stated, it's surprising that this is necessary, but we urge the adoption of this section to bolster the plans themselves and to encourage regulators to really examine the operator's plans, not only for their compliance with the regulations, but also for whether the plans make sense and account for risks known to the regulator.

Section 3. Emergency Response plans

The Massachusetts tragedy made clear that improvements in emergency communications are needed, and this section's requirements for specific plans on how and when first responders and the public will be notified will help improve communications.

Section 4. Operations and Maintenance Manuals

We support this common-sense requirement that operations manuals include procedures for responding to

overpressurization alarms and that operators insure that qualified employees review construction documents and that the operator think through the risks that might be presented by any change in the system and prepare itself to prevent those risks from occurring.

Section 5. Pipeline Safety Management Systems

In 2015, based on a recommendation from the NTSB after nearly a million gallons of oil was spilled into the Kalamazoo River in Michigan, the pipeline industry created a recommended practice (API RP1173) to help pipeline companies implement a continuous improvement Safety Management System. This promising voluntary effort ought to help companies reduce the number of incidents and near misses they have, and help create a stronger safety culture within companies so safety really is the first priority, not just a slogan. We have already seen some companies embrace this fully, and for those companies the change is real. So we support this effort, and believe it can have lasting impacts, but only if companies embrace it, which is always the rub with voluntary practices. We were surprised after the recent tragedy in the Merrimack Valley in Massachusetts to hear how many of the gas companies in that state had not yet moved forward on SMS, and only did so after a tragedy and the strong urging of the state regulator. We think it is still too early to have to make SMS a required regulation, but Congress should certainly ask the industry to show proof that companies are adopting this voluntarily, and what the measurable outcomes are. If the rate of adoption and implementation is too slow then PHMSA or Congress may need to step in with regulatory requirements, or enforcement incentives, to ensure that all companies embrace this valuable system, and not just the companies who do truly put safety first.

One recommendation we would make to help measure whether SMS is being implemented, would be that annual reporting requirements to PHMSA include whether a SMS has been implemented, and whether an entity outside of the company has reviewed that SMS, and who that outside entity was.

Section 6. Pipeline Safety Practices

We strongly support this proposal to require the production and maintenance of accurate, complete up-to-date records of distribution systems, including maps and drawings, and the requirement that these records be available to the relevant regulator.

Section 7. Civil Penalties

As we previously testified on the committee discussion draft, we are in favor of raising the maximum allowable fines under the statue. While we would certainly applaud these proposed changes, we would strongly prefer that the cap on fines for a related series of violations be eliminated entirely.

Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2019

The Administration recently released their proposal for reauthorization – the Protecting our Infrastructure

of Pipelines and Enhancing Safety Act of 2019. There are some good provisions in this bill that we hope this committee will consider, and there are other provision we hope you will reject. Here is a brief synopsis of the section we have the most interest in.

We hope you will support the following sections of the Administration's bill:

Section 4 – Pipeline Construction Project Data Collection

Section 7 – State Pipeline Safety Program Grants

Section 12 – Cost Recovery and Fees for Facility Reviews

Section 14 – Overpressure Protection

Section 15 - Management of Change

Section 16 - Operator Qualification

Section 19 – Joint Inspection and Oversight

We hope you will reject the following sections of the administration's bill:

Section 2 – Authorization of Appropriations

These amounts are actual requests for decreases in funding at a time when state inspection partners are not being reimbursed adequately, and when it is clear that PHMSA requires more funding to adequately fulfill congressional mandates

Section 8 – Property Damage Threshold

We support a thorough review of all incident reporting thresholds, but this single change would eliminate thousands of incidents from reporting, make natural gas pipelines look safer without any real increase in safety, and undermine the ability of regulators and the public to see if safety trends are improving or declining.

Section 17 – Timely Incorporation by Reference

The Secretary already has and uses this ability frequently, so there is no need for this addition. Unfortunately, often these industry developed standards are more focused on what is good for the pipeline industry, and not what is best practice for safety or the communities that might be affected by pipeline failures.

Section 18 – Criminal Penalties

We certainly oppose actions by anyone that put local communities at risk, but the proposed language is not well defined and goes too far beyond actual harm to a pipeline.

One section in the Administration bill that we support but have concerns regarding is **Section 5 – Voluntary Information Sharing System.** We support the idea of creating such a voluntary information sharing (VIS) system, but the details in this section for how that will be accomplished are lacking. A multi-stakeholder committee recently finished a report to the Secretary on how this VIS system should be created and operated, so we hope that PHMSA plans to follow that report's outline. We also have concerns that this will be an expensive effort in the millions of dollars, and there was not a request for additional funding for this effort. Without additional funding this effort might undermine the funding of existing PHMSA efforts, and we would oppose that approach.

According to PHMSA's data over the past five years there has been on average nearly 2 reportable pipeline incidents every day, that cause the deaths or hospitalization of over 7 people every month. These incidents have caused nearly $2.4 billion in property damage and released over 18 million gallons of hazardous liquids into the environment. While progress has been made over the last 20 years and pipelines are a critical part of our nation's energy infrastructure, we must do better to protect our communities and the environment. I thank you for the opportunity to provide this testimony today, and I and others at the Pipeline Safety Trust am available to answer any additional questions you might have and to work with you further as the reauthorization of the national pipeline safety program continues.