

COMMENTS OF THE ATTORNEYS GENERAL OF MASSACHUSETTS,
ARIZONA, CONNECTICUT, DELAWARE, MAINE, MARYLAND, MINNESOTA,
NEW JERSEY, NEW YORK, OREGON, PENNSYLVANIA, VERMONT,
WISCONSIN, AND THE DISTRICT OF COLUMBIA

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Via Electronic Submission on Regulations.gov

Alan Mayberry, Associate Administrator
Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation, 1200
New Jersey Avenue SE, West Building
Ground Floor, Room W12-140,
Washington, DC 20590-0001

Re: Pipeline Safety: Safety of Gas Distribution Pipelines and Other
Pipeline Safety Initiatives, 88 Fed. Reg. 61,746 (Sept. 7, 2023), Docket
No. PHMSA 2021-046, RIN 2137-AF3

Dear Associate Administrator Mayberry:

The Attorneys General of Massachusetts, Arizona, Connecticut, Delaware, Maine, Maryland, Minnesota, New Jersey, New York, Oregon, Pennsylvania, Vermont, Wisconsin, and the District of Columbia (“States Attorneys General”), submit these comments on the U.S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration’s (“PHMSA”) Notice of Proposed Rulemaking, “Pipeline Safety: Safety of Gas Distribution Pipelines and Other Pipeline Safety Initiatives” (“Proposal”), 88 Fed. Reg. 61,746 (Sept. 7, 2023). The States Attorneys General appreciate and support the Proposal, which will reduce the risk of another tragic incident like the 2018 explosions in the Merrimack Valley region of Massachusetts, discussed below.

PHMSA’s revisions to emergency response plan requirements will improve vital communications with the public and public safety officials. The proposed revisions to the Distribution Integrity Management Program regulations will enhance gas distribution company operators’ knowledge of their systems and improve identification and mitigation of all damage or failure risks to their systems. PHMSA’s proposed revisions to operations and maintenance (“O&M”) manuals will

require operators to identify, immediately respond to, and correct accidental overpressurization events, as well as reduce incidents of the unintentional release of gas into the atmosphere. The States Attorneys General provide comments below on the Proposal's recommendation to amend 49 C.F.R. Part 192, §192.605 to require inclusion of a management of change ("MOC") process in the O&M manuals of gas distribution companies. 88 Fed. Reg. at 61,781, 61,801. The States Attorneys General strongly support this requirement and respectfully request that PHMSA's final rule recommend that distribution company operators consider adopting the MOC risk evaluation assessment and mitigation process prescribed by the American Petroleum Institute in their O&M manuals, *Pipeline Safety Management System Requirements*, API Recommended Practice 1173 ("API Safety Management System"). The States also recommend that PHMSA advise distribution company operators to consider adopting API Management System risk evaluation and mitigation process to all distribution company operating, maintenance, and construction manuals.

I. BACKGROUND AND OUR STATES' INTEREST IN GAS PIPELINE SAFETY

Nationwide, more than half of all gas pipelines were constructed prior to 1970, primarily from cast iron and steel, which can degrade and erode over time, posing significant risks to public safety and the environment. 88 Fed. Reg. at 61,751. Despite accounting for only about a fifth of all gas pipelines nationwide, the Northeast United States—and Massachusetts specifically—has a large amount of older, low-pressure cast iron and bare steel gas distribution pipelines that are particularly vulnerable to leaks and overpressurization events. *See Natural Gas Distribution Infrastructure Replacement and Modernization: A Review of State Programs*, National Association of Regulatory Utility Commissioners (January 2020), at 11; *see also* 88 Fed. Reg. at 61,747, 61,751-752. These pipes tend to be more prevalent in historically underserved and disadvantaged communities.¹ Pipeline leaks release greenhouse gases, and especially methane, a particularly potent greenhouse gas, into the atmosphere.² Gas pipeline leak events thus

¹ *See* 88 Fed. Reg. at 61,747; *see also* Luna & Nicholas, "An Environmental Justice Analysis of Distribution-Level Natural Gas Leaks in Massachusetts, USA," 162 Energy Policy 112778 (Mar. 2022); Weller et al., "Environmental Injustices of Leaks from Urban Natural Gas Distribution Systems: Patterns Among and Within," 13 U.S. Metro Areas," Environ. Sci. & Tech. (May 11, 2022).

² Although carbon dioxide comprises most global greenhouse gas emissions today, methane has twenty-five times the warming impact of carbon dioxide over a period of 100 years. *See* PHMSA notice of proposed rulemaking, *Pipeline Safety: Gas Pipeline Leak Detection and Repair*, 88 Fed. Reg. 31,890, at 31,894 (May 18, 2023).

contribute to the climate crisis and impede our States' abilities to meet policy goals and legislative mandates to reduce greenhouse gas emissions.³

These types of vulnerabilities have had tragic consequences in Massachusetts. On September 13, 2018, Columbia Gas of Massachusetts ("Columbia Gas of MA"), while in the process replacing aging cast iron piping, overpressurized the low-pressure gas distribution center in the Merrimack Valley region of Massachusetts. This overpressurization resulted in the death of 18-year-old Leonel Rondon and dozens of injuries and hospitalizations. The incident also destroyed five homes in the city of Lawrence and the towns of Andover and North Andover, Massachusetts, damaged more than 131 homes and structures, and left thousands of homes without gas service for months. Further, thousands of residents were evacuated, and many of those residents could not return to their homes until three months after the incident.

The National Transportation Safety Board ("NTSB") investigated the cause and circumstances of the incident and issued a final report on September 24, 2019 - NTSB/PAR-19/02 PB 2019-101365 ("NTSB Report"). The NTSB investigation found "that the probable cause of the overpressurization of the natural gas distribution system and the resulting fires and explosions was Columbia Gas of Massachusetts' weak engineering management that did not adequately plan, review, sequence, and oversee the construction project that led to the abandonment of a cast iron main without first relocating regulator sensing lines to the new polyethylene main." NTSB Report at vii. When the cast iron main was abandoned, the regulator sensing lines still attached to it sensed the drop in pressure and responded by fully opening,

³ For example, *see* Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy, 2021 Mass. Acts. ch. 8, sec. 8, *see also* the Massachusetts Clean Energy and Climate Plan for 2025 and 2030 (June, 30, 2022), at 62 (requiring that by 2050, Massachusetts limit emissions to achieve at least net zero greenhouse gas emissions statewide and economywide, and in no event higher than a level 85% below 1990 emissions baseline). *See also* the Delaware Climate Change Solutions Act of 2023, 7 *Del. C.* § 10000, et seq. (requiring greenhouse gas emissions reduction strategies to achieve a 50% reduction from 2005 levels by 2030 and net zero by 2050); the Maryland Clean Energy Jobs Act, 2021 Md. Laws. ch. 164 (H.B. 1007) (codified as amended at Md. Code Ann., Pub. Util. § 7-702); the New York State Climate Leadership and Community Protection Act, Chapter 106 of the Laws of 2019, codified at the New York State Environmental Conservation Law § 75-0107 (requiring greenhouse gas emission reductions in New York State of at least 40 percent from 1990 levels by 2030 and at least 85 percent from 1990 levels by 2050); Oregon Revised Statutes 469A.410 (requiring major electric utilities to eliminate GHG emissions by 2040), and Oregon Administrative Rules chapter 340, division 271 (requiring reductions in greenhouse gas emissions from fossil fuels used in transportation, residential, commercial and industrial settings); and 10 Vt. Stat. Ann. § 578 (providing greenhouse gas reduction requirements for Vermont by 2025, 2030, and 2050).

allowing high-pressure gas to be released into the low-pressure distribution system.
Id.

Additionally, the NTSB found that Columbia Gas of MA did not practice a MOC process for managing maintenance and construction changes to pipeline operations in the Merrimack Valley Incident. NTSB Report at 26–29, 51. The management of change process requires an analysis of the implications of pipe modification and replacement projects, including identification and assessment of the risks associated with the project and the measures necessary to reduce the likelihood of an incident, as well as the potential severity of consequences should an incident occur. The NTSB recommended that Columbia Gas of MA institute a risk assessment mitigation plan that included the management of change process prescribed by the API Safety Management System. NTSB Report at 26–29, 51; NTSB Recommendation Report - NTSB/PSR-18/02, at 5–6.⁴

II. LEGISLATIVE AND REGULATORY ACTIONS

On December 27, 2020, the President signed into law pipeline safety reauthorization legislation, *Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020* (PIPES Act of 2020, Pub. L. N 116–260) (“PIPES Act”). Massachusetts Senators Edward Markey and Elizabeth Warren and Massachusetts Representative Lori Trahan sponsored Sections 202 through 206 of the PIPES Act, *Title II, the Leonel Rondon Pipeline Safety Act*. Section 204 of the *Leonel Rondon Pipeline Safety Act* directs PHMSA to “update regulations to ensure that each procedural manual for operations, maintenance, and emergencies developed by an operator of a distribution pipeline . . . include . . . a detailed [written] procedure for the management of change process.”⁵ Section 205(c)(1) of the *Leonel Rondon Pipeline Safety Act* requires PHMSA—and state authorities—“to promote and assess pipeline safety management systems frameworks developed by operators of natural gas distribution systems and described in [the API Safety

⁴ The MOC process is one element of the comprehensive API Safety Management System risk identification and mitigation system. The API Safety Management System is the product of a collaboration between pipeline operators, state and federal regulators, and other stakeholders: API; the Association of Oil Pipelines; the American Gas Association; the American Public Gas Association; the Interstate National Gas Association of America; and the Canadian Energy Pipeline Association. The American National Standards Institute has sanctioned the API Safety Management System Requirements. NTSB Report at 26, 27.

⁵ PHMSA regulations require that gas distribution companies “prepare and follow a manual of written procedures for conducting operations and maintenance activities and for emergency response.” 49 CFR Part 192, § 192.605 (operations, maintenance, and emergencies).

Management System Requirements].” Further, Section 205(a) requires PHMSA to report to Congress on the status of the implementation of the API Safety Management System Requirements by distribution company operators.⁶

PHMSA, pursuant to the PIPES Act and in response to the recommendations in the NTSB Report regarding the Merrimack Valley incident, issued this Proposal recommending a series of revisions to the federal regulations - *Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards* (49 CFR parts 190–199) (“MFS Standards”). 88 Fed. Reg. at 61,746-61,804.

PHMSA requests comments on its Proposal to revise MFS Standards §192.605 to include a management of change process. *Id.* at 61,781, 61,801. Specifically, PHMSA requests comments on whether operators should include in their O&M manuals the same MOC process for gas transmission companies prescribed by the American Society of Mechanical Engineers and the American National Standards Institute – ASME/ANSI B31.8S. *Id.* at 61,781; *see* MFS Standards § 192.911(k).

III. DISCUSSION AND RECOMMENDATIONS

The States Attorneys General applaud PHMSA’s Proposal and agree that it will reduce the risk of tragic incidents like the explosions and fires that resulted from the overpressurization of gas lines in the Merrimack Valley region of Massachusetts in 2018. PHMSA’s proposed amendments will also help combat the climate crisis by decreasing the number of non-hazardous leaks from aging cast iron and bare steel pipelines, thus reducing the unintended release of greenhouse gases into the atmosphere.

Specifically, the States Attorneys General support PHMSA’s proposed revisions to emergency response plans, which will improve vital communications with the public and public safety officials. *Id.* at 61,801-02. The States Attorneys General also support PHMSA’s proposed revisions to the Distribution Integrity Management Program regulations. *Id.* at 61,803-04. These revisions will enhance gas distribution company operators’ knowledge of their systems and improve identification and mitigation of all risks of damage or failures to their systems. In addition, the States support PHMSA’s proposed revisions to O&M manuals that will require operators to identify, immediately respond to, and correct accidental

⁶ On September 6, 2022, PHMSA issued a request for comments on the API Safety Management System, “Pipeline Safety: Information Collection Activities: Voluntary Adoption of API RP 1173 for Gas Distribution Systems,” PHMSA 2022-0060, 87 Fed. Reg. 54,590 (Sept. 6, 2022).

overpressurization events and reduce incidents of the unintentional release of gas into the atmosphere. *Id.* at 61,801.

The States Attorneys General strongly support PHMSA's proposal to amend 49 C.F.R. Part 192, §192.605 to require distribution companies to include a detailed management of change process in their O&M manuals. 88 Fed. Reg. at 61,781, 61,801. We recognize that the ASME/ANSI B31.8S process could serve as a model for a distribution management of change process and that there are other PSMS processes available. The States, however, respectfully request that PHMSA recommend that distribution operators consider adopting the management of change risk mitigation process from the API Safety Management System in their O&M manuals. This is consistent with the PIPES Act, the recommendations in the NTSB Report, and best practices for distribution companies.

Distribution company implementation of the API Safety Management System risk identification and mitigation process for management of change would better protect public safety and the environment, and would be technically feasible, cost-effective, and practicable. *See* 88 Fed. Reg. 61,781. Indeed, some distribution companies have already begun implementing the API Safety Management System risk assessment and mitigation process. In 2018, the Northeast Gas Association established a committee to embed all the API Safety Management System principles into day-to-day natural gas utility operations.⁷ In 2020, the Massachusetts Department of Public Utilities approved Eversource Energy's request to include implementation of API Safety Management System Requirements as a performance-based rate scorecard metric, with the goal of achieving certain implementation levels to its entire operations, maintenance, and construction activities within three years. *NSTAR Gas Company, d/b/a Eversource Energy*, D.P.U. 19-120, at 108 (2020). In September 2022, the American Gas Association ("AGA") recommended that distribution company operators follow the API Safety Management System. *AGA, Commitment to Enhancing Safety, Environmental Stewardship, and Security* (Sept. 14, 2022).⁸ Due to its growing acceptance by distribution companies, it would be administratively efficient, and consistent with gas industry best practices, for distribution companies to

⁷ The Northeast Gas Association represents natural gas distribution companies, transmission companies, liquefied natural gas importers, and associated member companies. These companies provide natural gas to over 13 million customers in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.

⁸ The AGA represents more than 200 local energy companies that deliver natural gas throughout the United States. More than 72 million customers receive their gas from AGA members.

incorporate the API Safety Management System management of change process in their respective O&M manuals.

Notably, the Proposal's recommended revision to MFS Standards § 192.605 expands the scope of the management of change process beyond the risk of overpressurization to include "other changes that may impact the integrity or safety of the gas distribution system." 88 Fed. Reg. 61,801 (proposed MFS Standards, 192.605 § (13)(g)(1)(v)). This proposed revision is consistent with Section 205 of the *Leonel Rondon Pipeline Safety Act's* mandate to promote and assess the API Safety Management System. The API Safety Management System risk evaluation and mitigation process—if properly applied to operations, maintenance, and construction activities—would provide a framework to identify and manage risk, promote a learning environment, and continuously improve pipeline safety and integrity.

IV. CONCLUSION

For all of the above reasons, the States request that PHMSA recommend that gas operators consider including the API Safety Management System MOC process in their O&M manuals, which is consistent with the PIPES Act and gas distribution company best practices. The States also recommend that PHMSA advise distribution companies to consider adopting the entire API Safety Management System risk evaluation and mitigation process to all operating, maintenance, and construction procedures. Operator compliance with PHMSA's proposed amendments, along with the revisions to emergency response plans, comprehensive additions to the Distribution Integrity Management Program regulations, and the several improvements to O&M manuals, will result in even greater pipeline safety, reduce the risk of the unintended release of gas into the atmosphere, and greatly mitigate the risk of incidents like that of the 2018 Merrimack Valley tragedy.

The States appreciate the opportunity to comment on the Proposal and respectfully request that PHMSA consider these comments favorably.

Respectfully submitted,

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