



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

December 9, 2020

Via Email

Mr. Ted Thomas
Chairman
Arkansas Public Service Commission
1000 Center Street
Little Rock, AR 72203

Dear Chairman Thomas:

On November 23, 2020, a representative of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an evaluation of the Arkansas Public Service Commission's (APSC) enforcement of the Arkansas State excavation damage prevention law. PHMSA conducted this evaluation pursuant to 49 United States Code (USC) § 60114 and 49 Code of Federal Regulations (CFR) Part 198, Subpart D—State Damage Prevention Enforcement Programs. Based on this evaluation, PHMSA has determined that the enforcement of the Arkansas excavation damage prevention law is "adequate."

PHMSA evaluates a state's excavation damage prevention enforcement program based on the criteria detailed in 49 CFR 198.55 and scores the state's compliance with those criteria. Although APSC's enforcement program was deemed "adequate" for calendar year (CY) 2019, this is not a finding by PHMSA that the state program has no room to further improve the program's effectiveness. Accordingly, PHMSA would like to bring to your attention an area of improvement involving the requirements of 49 CFR 198.55(a)(5). The preamble to the final rule for this requirement contains PHMSA's guidance for how it applies this section when evaluating a state program. PHMSA expects state enforcement programs to be balanced with regard to how they apply enforcement authority. Although review of this criterion will not, by itself, render a state enforcement program inadequate, PHMSA seeks a pattern of enforcement activity that demonstrates that penalties are applied to the responsible party or parties in excavation damage incidents and not consistently to only one stakeholder group.

In consideration of the above, a state's enforcement should focus on the compliance responsibilities of excavators, pipeline operators and others involved in the process. In CY 2019, Arkansas' gas distribution operators reported a total of 1,681 excavation damages to their pipeline facilities in the annual reports submitted to PHMSA. Of these 1,681 excavation damages, 635 were attributed to pipeline operators for not having complied with their

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responsibilities in accordance with the Arkansas Underground Facilities Damage Prevention Act. The APSC issued 549 warning letters in CY 2019, but only four of those letters were issued to the operators. Furthermore, trends have shown that operators are responsible for approximately thirty seven percent of excavation damages to distribution gas pipelines, but receive less than one percent of the enforcement actions. PHMSA encourages the APSC to evaluate how it may improve its program in this regard and provide an update to PHMSA relative to this issue within 60 days from receipt of this letter.

PHMSA appreciates your dedication to safety. As you are aware, excavation damage continues to be a leading cause of pipeline failures, some of which have resulted in fatalities, serious injuries, and environmental damage. Nationwide statistics show that effective enforcement of state damage prevention laws reduces excavation damage and pipeline incidents, resulting in enhanced public safety.

Should you or your staff have any questions regarding this letter, please contact David Appelbaum, PHMSA State Evaluator, at (202) 617-6329 or by email at David.Appelbaum@dot.gov.

Sincerely,



Massoud Tahamtani
Deputy Associate Administrator, Policy and Programs
Office of Pipeline Safety

cc: Bobby Henry, Chief, Pipeline Safety, Arkansas Public Service Commission