



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

1200 New Jersey Avenue, SE
Washington, DC 20590

September 29, 2023

Via Email

Ms. Jenifer French
Chair
Public Utilities Commission of Ohio
180 E. Broad Street, 12th Floor
Columbus, OH 43215

Dear Chair French:

On August 28, 2023, a representative of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an evaluation of the Public Utilities Commission of Ohio's (OPUC) enforcement of the Ohio 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 Ohio 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 OPUC's enforcement program was deemed “adequate” for calendar year (CY) 2022, 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)(3). This is one of the evaluation criteria for a state's program and assesses, in part, whether the state is “assessing civil penalties and other appropriate sanctions for violations at levels sufficient to deter noncompliance.” In CY 2022, Ohio's gas distribution operators reported a total of 4,049 excavation damages to their pipeline facilities in the annual reports submitted to PHMSA. Based on the information gained during our evaluation, only 17 of these offenders received a civil penalty. Additionally, of the 4,049 excavation damages reported, there were only two civil penalties assessed for the 1,546 damages where the apparent root cause was attributed to pipeline operators for not having complied with their responsibilities in accordance with Ohio's One-Call law. The number of civil penalties issued in CY 2022 does not demonstrate that the State is regularly and consistently using its enforcement authority and imposing appropriate sanctions for violations of the State excavation damage prevention law.

On November 3, 2020, PHMSA communicated these similar concerns. In our view, and specific to PHMSA-regulated facilities, there has been no demonstrative increase in the application of effective enforcement processes and no discernable improvement in excavation safety since then. Therefore, to avoid a potential determination of “inadequacy” in the future, PHMSA encourages

the OPUC to evaluate how it may improve its program and provide an update to PHMSA relative to these issues within 60 days from receipt of this letter.

PHMSA appreciates your dedication to pipeline safety. As you are aware, excavation damage continues to be a leading cause of pipeline failures, some of which result 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 Mr. David Appelbaum, PHMSA State Evaluator, at (202) 617-6329 or by email at David.Appelbaum@dot.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Zach Barrett", with a long, sweeping flourish extending to the right.

Zach Barrett
Director, State Programs

cc: Peter A. Chase, Chief, Facility Operations & Field Division, OPUC