

June 27, 2019

Howard "Skip" Elliott  
Administrator  
Pipeline and Hazardous Materials Safety Administration  
U.S. Department of Transportation  
West Building, Ground Floor, Room W12-140  
Washington, DC 20590

Dear Administrator Elliott,

The national associations signed onto this letter represent construction contractors, manufacturers, and distributors who build and maintain a wide range of underground facilities and transportation infrastructure. Member companies provide the manpower and equipment needed to build, repair, and maintain the infrastructure needed for natural gas and oil transportation, broadband, electric, water and wastewater infrastructure, as well as the nation's surface transportation system.

On June 14, we sent you a letter describing the recent failure of communications provider CenturyLink in fulfilling its responsibilities to locate and mark its underground facilities. In Minnesota alone, response to more than 68,000 locate tickets was delayed, with 10,000 completely unanswered since the beginning of April. Now it has been reported that Consumers Energy has failed to locate and mark its underground gas and electric lines "in a timely manner" in more than 20,000 cases. While the Michigan Public Service Commission (MPSC) is requiring Consumers to act, we suggest adequate enforcement action is needed to hold this utility owner/operator accountable.

As is the case of CenturyLink's neglect of its locating responsibilities, Consumer Energy's violations occurred in April and May of this year. Consumers Energy has acknowledged it has "not met expectations," in locating and marking their facilities, which is an extraordinary understatement. Indeed, the utility has not met its specific responsibilities in the damage prevention process required by state law. Consumers Energy has indicated they are hiring a third locating contractor to help complete remaining marking requests in certain parts of Michigan, a seemingly underwhelming response to an overwhelming number of violations.

Federal pipeline safety regulations (49 CFR § 192.707) require that "a line marker must be placed and maintained as close as practical over each buried main and transmission line." Further, § 460.727 of Michigan's damage prevention statute requires that facility operators "respond to a ticket by the start date and time for the excavation...by marking its facilities in the area of the proposed excavation or blasting in a manner that permits the excavator to employ soft excavation to establish the precise location of the facilities" within three days of one-call notification. The penalty for failing to meet these responsibilities in Michigan is \$5,000 per violation.

Similar to the behavior of CenturyLink, the neglect by Consumers Energy puts underground infrastructure in Michigan at risk and compromises public safety. Unlike the case of CenturyLink, however, PHMSA is in a position to penalize Consumers Energy, and we encourage you to do so as the agency responsible for enforcing federal damage prevention regulations.

We appreciate your consideration of this important issue, and we are available to answer any questions you may have.

Best Regards,



American Pipeline Contractors Association



American Road and Transportation Builders Association



Associated General Contractors of America



Distribution Contractors Association



National Utility Contractors Association



Power and Communication Contractors Association