



Midstream Pipeline Safety
211 North Robinson
Suite 950
Oklahoma City, OK 73102

April 16, 2015

R. M. Seeley, Director Southwest Region
PHMSA Pipeline Safety
8701 S. Gessner Dr.
Suite 1110
Houston, TX 77074
713-272-2859

**Re: Response of Enable Mississippi River Transmission, LLC
CPF 4-2015-1003**

Dear Mr. Seeley,

In accordance with 49 C.F.R. Part 190, Subpart B, Section 190.209(a)(2) and (b)(1),¹ of the Pipeline and Hazardous Materials Safety Administration's ("PHMSA") regulations, Enable Mississippi River Transmission, LLC ("EMRT") hereby responds to the Notice of Proposed Violation ("NOPV"), Proposed Civil Penalty, and Proposed Compliance Order (collectively, the "Notice") issued by PHMSA on March 12, 2015, in Docket No. CPF 4-2013-1010, and received by MRT on March 17, 2015.

Introduction and Overview

On October 22, 2014, MRT experienced an excavation related accident to its Mainline 3 (ML-3) 26" line near Newport, AR. Following the incident, a representative of PHMSA conducted an incident investigation and reviewed documentation related to the accident.

EMRT subsequently initiated and conducted its own independent investigation of the incident and retained a third party investigator to utilize the Behavior Justification® Root Cause Analysis Methodology ("RCA") to determine the root cause(s) of the accident. EMRT provided a copy of this investigation report to PHMSA as part of PHMSA's incident investigation.

Response

While EMRT does not contest the findings reached in PHMSA's Notice concerning Item 1 -- and no responses are required for Warning Items 2 and 3 -- EMRT is taking this opportunity to clarify the facts presented in the Notice for each of the three items and requests that such clarification be taken into consideration by PHMSA and included in the Final Order.

¹ 49 C.F.R. Part 190, Subpart B, §§ 190.209(a)(2) and (b)(1).

1. 192.614 Damage prevention program

(c) The damage prevention program required by paragraph (a) of this section must at a minimum:

(5) Provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins.

PHMSA states that "Enable's third party locate contractor did not attempt to locate the line until October 21, 2014, at which time they were unable to mark the location and returned the ticket for further action by Enable." This is not correct. In fact, first contact was made with Tanner Construction between 1500 and 1600 on Monday, October 20, 2014 by EMRT's third party locate contractor, Mr. Justin Simpson. While this first contact is not documented in the One Call Ticket, it is supported by the findings of the independent root cause investigation. Tanner Construction was, at that time, informed that Mr. Simpson would not be on location until Tuesday, October 21, 2014. When Mr. Simpson arrived at approximately 1631 October 21, 2014, he was unable to locate the pipeline. Mr. Simpson then contacted Tanner Construction and informed them that EMRT would be at the dig site on October 22, 2014 to provide more information on where the pipeline ML3 is located (see Attachment 1). Following this communication, Tanner Construction made the deliberate decision to continue excavation activities with full knowledge that the subject pipeline was present in the general area of excavation. At the time of the incident, Mr. Wayne Yarborough with Tanner Construction directly notified EMRT System Control about the line strike. Mr. Yarborough stated he obtained the EMRT contact phone number from the clear line of site pipeline markers identifying the approximate location of the pipeline through the excavation area.

EMRT requests that PHMSA take into consideration the actual time of initial contact and the deliberate decision to continue excavation on the part of Tanner Construction when assessing the Civil Penalty associated with this item. EMRT believes that the facts, as clarified, should reduce or mitigate the magnitude of the Civil Penalty assessed by PHMSA for Item 1.

2. 192.614 Damage Prevention Program

(a) Except as provided in paragraphs (d) and (c) of this section, each operator of a buried pipeline must carry out in accordance with this section, a written program to prevent damage to that pipeline from excavation activities. For the purposes of this section excavation activities includes excavation, blasting, boring, tunneling, backfilling, the removal of aboveground structures by either explosive or mechanical means, and other earthmoving operations.

(c) The damage prevention program required by paragraph (a) of this section must at a minimum:

(4) If the operator has buried pipelines in the area of excavation activity, provide for actual notification of persons who give notice of their intent to excavate of the type of temporary marking to be provided and how to identify the markings.

PHMSA states that EMRT failed to provide a positive response (notification) in accordance with its written Damage Prevention Program. Enable actually did provide this notice to the contractor on multiple occasions. Per the findings of the investigation and documentation provided to PHMSA, Mr. Simpson notified Tanner Construction on Monday October 20, 2014 between 1500 and 1600, stating that he would not be on location until the following day and that the ticket was not “all clear.” When Mr. Simpson arrived on Tuesday October 21, 2014, he was unable to locate the pipeline and again notified Tanner construction that the ticket was not “all clear.” While EMRT did not arrive on site until after the accident, EMRT believes its contract locate company did, in fact, provide positive response to the contractor that the area was *not* “all clear.” Tanner construction decided to begin and continue excavation in the area despite not being given the “all clear” or markings.

3. 192.614 Damage prevention program

(c) The damage prevention program required by paragraph (a) of this section must at a minimum:

(6) Provide as follows for inspection of pipelines that an operator has reason to believe could be damaged by excavation activities:

(i) The inspection must be done as frequently as necessary during and after the activities to verify the integrity of the pipeline;

PHMSA states concerning Item 3 that EMRT did not provide for inspection of the ML-3 26” pipeline to prevent damage from third party damage, nor did it ensure the integrity of the pipeline. This is not entirely accurate. Tanner Construction had knowledge of the presence of the pipeline and chose to proceed with the excavation in the area despite not being given the “all clear” or markings. The investigation report states that when the accident occurred, Mr. Yarborough stated he obtained the EMRT contact phone number from the pipeline sign near the entrance to the excavation site. The pipeline was marked with markers and Tanner Construction was aware of the presence of the pipeline from both communications with Mr. Simpson and the pipeline markers. While the contract locate company had identified excavation had begun when the accident occurred, this information was not available to EMRT company employees until after the line had been struck due to Tanner beginning excavation before the pipeline was marked.

Conclusion

EMRT has always stressed, and will continue to stress, the importance of pipeline safety and effective damage prevention practices. The actions specified in this letter and the actions taken following the accident demonstrate EMRT's commitment to addressing safety issues. In the wake of this accident, EMRT has made the decision to manage all pipeline locates with employee personal instead of utilizing third party locators. EMRT is continually working to improve the effectiveness of our Pipeline Safety Program.

EMRT requests that the factual information set forth above be included in any Final Order PHMSA issues related to this accident. We also ask the PHMSA consider all the actions taken, including those of Tanner Construction, when assessing the Civil Penalty and proposed Compliance Order.

Please contact me if you have any questions regarding this response.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Bullock". The signature is fluid and cursive, with the first name "Chris" and last name "Bullock" clearly distinguishable.

Chris Bullock
Director DOT Compliance

CC: Paul M. Brewer
Royce B. Brown
Patrick R. Ashby
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