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March 24, 2021

Patricia Van Gerpen  
Executive Director  
SD Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501

RE: Docket RM19-001 - Response to Comments from MidAmerican Energy

Ms. Van Gerpen:

I have reviewed the proposed revised language for 20:10:37:10 in their letter from MidAmerican Energy dated March 23, 2021 and provide the following comments.

1. I agree with the effort to remain in alignment with federal code and believe the word “confirmed” should be included in the language. This was an oversight on my part. I also agree that there needs to be a definition of “confirmed discovery”. I have included the federal code for reference below.
2. Regarding the language “notifying the state as soon as reasonably possible after notifying the National Response Center.” I disagree and once again believe we should mimic federal code. When an incident happens and the operator notifies the National Response Center, that notification immediately goes to the PHMSA Accident Investigation Division. At that time the PHMSA Accident Investigation Division immediately reaches out to the state pipeline safety program to get an update. The state pipeline safety program then has 15 minutes to respond with information about the incident. If the state doesn’t respond PHMSA Accident Investigation Division will reach out directly to the operator. I believe it is the best interest of everyone that the state is involved in the investigation process directly with the operator rather than having PHMSA get involved also. (I have included this detailed procedure at the end of this letter.)
3. I agree with the revised rule language provided by Adam de Hueck below:

**20:10:37:10. Pipeline operator's incident reporting requirements.** As soon as reasonably possible, **but no later than one hour**, following **confirmed discovery as found in the Code of Federal Regulations, Title 49, Part 191 as of July 1, 2021**, of an incident, the pipeline operator

shall notify the commission by phone of any incident on the pipeline system owned or operated by the pipeline operator. The notification shall include the identity of the pipeline operator, the time and location of the incident, whether there are ascertainable fatalities, personal injuries requiring inpatient hospitalization, or property damage, or both, and any other significant facts and public dangers relevant to the incident. This reporting requirement does not relieve the pipeline operator of the federal reporting requirements as found in the Code of Federal Regulations, Title 49, Part 191 as of July 1, ~~2009~~ 2021. This reporting requirement requires personal notification to an inspector. Inspector contact information shall be provided by the commission.

Sincerely,  
Mary Zanter

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Pipeline Safety Program Manager

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**49 CFR Part 191 - §191.5 Immediate notice of certain incidents.**

(a) At the earliest practicable moment following discovery, but no later than one hour after confirmed discovery, each operator must give notice in accordance with paragraph (b) of this section of each incident as defined in § 191.3.

(b) Each notice required by paragraph (a) of this section must be made to the National Response Center either by telephone to 800-424-8802 (in Washington, DC, 202 267-2675) or electronically at <http://www.nrc.uscg.mil> and must include the following information:

(1) Names of operator and person making report and their telephone numbers.

(2) The location of the incident.

(3) The time of the incident.

(4) The number of fatalities and personal injuries, if any.

(5) All other significant facts that are known by the operator that are relevant to the cause of the incident or extent of the damages.

(c) Within 48 hours after the confirmed discovery of an incident, to the extent practicable, an operator must revise or confirm its initial telephonic notice required in paragraph (b) of this section with an estimate of the amount of product released, an estimate of the number of fatalities and injuries, and all other significant facts that are known by the operator that are relevant to the cause of the incident or extent of the damages. If there are no changes or revisions to the initial report, the operator must confirm the estimates in its initial report.

**49 CFR Part 191 - §191.3 Definitions**

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**Confirmed Discovery** means when it can be reasonably determined, based on information available to the operator at the time a reportable event has occurred, even if only based on a preliminary evaluation.

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Reference from 2021 Guidelines for States Participating in the Pipeline Safety Program.

**6.1 Investigation of Pipeline Failures**

Pursuant to Federal/State regulations, a State agency shall conduct a telephonic investigation of each National Response Center (NRC) report related to gas, hazardous liquid pipelines and LNG facilities subject to U.S. Code of Federal Regulations, Chapter 49 where the State has a 60105 certification or section 60106 agreements with certification. When the incident occurs on interstate facilities, a State with an Interstate Agent Agreement typically will be the lead investigator but it is ultimately for the PHMSA Accident Investigation Division (AID) Director to determine if the State or PHMSA will continue as the lead regulator. The Region manages all enforcement actions for interstate facilities. The primary objective of the investigation activities is to identify the probable cause, minimize the possibility of recurrence of this operator and other operators in the state’s jurisdiction and to institute enforcement action where noncompliance with the safety standards has occurred. At a minimum, a Failure Investigation Report (FIR) must be completed which includes Observations, Contributing Factors and Recommendations to Prevent Incident Reoccurrence. A template for the FIR can be found in Appendix E. If non-compliance by an operator is determined, it should be included in the FIR. The State Agency must take enforcement action for any determined non-compliances.

AID will notify the State agency when it receives an initial NRC report, an NRC 48-hour update report, or other report of a failure of pipeline facilities in that State. AID staff will relate all details of the failure provided to DOT in accordance with the reporting requirements under 49 CFR, Parts 191, 193, or 195. The National Pipeline Incident Coordinator’s (NPIC) goal is to initiate the investigation within 15 minutes after receipt incident report. For events that are particularly time-sensitive, the NPIC calls the State. If the State cannot be reached promptly, the NPIC contacts the operator directly. For less time-sensitive incidents, if the State cannot be reached, the NPIC will wait one hour before directly contacting the operator. The NPIC may call the operator directly when the jurisdiction is uncertain. Upon receipt of the report from the NPIC, the State may make an immediate e-mail statement to the NPIC that they have received the report and are working to gain additional information if they have not been able to secure credible updates or if they are not able to obtain sufficient information within the 15-minute target time. During the telephonic investigation phase, the State validates preliminary information, obtains additional information, evaluates the severity of the incident and the pipeline operator’s response, and disseminates the information to the NPIC. The State agency and AID staff should maintain close contact until the investigation is completed. The State agency should communicate its plans for investigating the incident to the NPIC (888-719-9033) and provide updates as directed by the NPIC.