

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
vs. Aevenia, Inc.
Complaint**

Case No. GS-11-664

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Cara DeSaye deposes and says that:

she is over the age of 18 years and not a party to this action and, on the 1st day of **November, 2011**, she deposited in the United States Mail, at Bismarck, North Dakota, **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed, containing a photocopy of:

Complaint

Motion

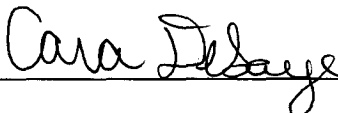
The envelope was addressed as follows:

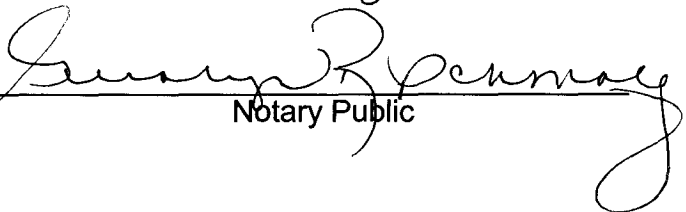
George Koeck
PO Box 9156
Fargo ND 58106-9156

Cert. No. 7010 3090 0002 4629 4331

The address shown is the respective addressee's last reasonably ascertainable post office address.

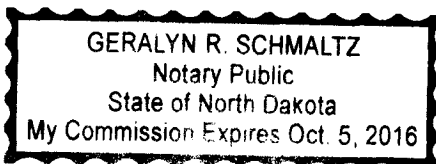
Subscribed and sworn to before me
this 1st day of **November, 2011**





Notary Public

SEAL



APPROVED

DATE: 10-26-11
[Signature]

MOTION

October 26, 2011

**Public Service Commission
vs. Aevenia, Inc.
Complaint**

Case No. GS-11-664

I move the Commission find the October 20, 2011 complaint filed by Public Service Commission staff states a *prima facie* case, and serve the complaint on the Respondent, Aevenia, Inc., in Case No. GS-11-664.

PJF



Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark
Brian P. Kalk
Kevin Cramer

Executive Secretary
Darrell Nitschke

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
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Phone: 701-328-2400
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RECEIVED

OCT 20 2011

20 October 2011

PUBLIC SERVICE COMMISSION

Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
600 E. Blvd. Ave. Dept. 408
Bismarck, ND 58505-0480

RE: Public Service Commission vs. Aevenia, Inc.
Complaint
PSC Case No. GS-11-664

Dear Mr. Nitschke:

Enclosed for filing is an Advocacy Staff Complaint against Aevenia, Inc. in the captioned case.

Best regards,

Illona A. Jeffcoat-Sacco
General Counsel

enclosure

c:w/enclosure
Steven Noack

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission,

Case No. GS-11-664

Complainant,

vs.

Aevenia, Inc.

Respondent

DAMAGE PREVENTION COMPLAINT

North Dakota Public Service Commission Advocacy Staff (Advocacy Staff), for its complaint against Aevenia, Inc. (Aevenia), alleges and shows the following:

I

Aevenia is a corporation with principle offices at 3030 24th Ave. S, Moorhead, Minnesota, 56560-5933.

II

Williston Basin Interstate Pipeline Company (WBI) is a corporation with principle offices at 1250 West Century Ave., Bismarck, North Dakota, 58503.

III

Commission Staff conducted an investigation into the third party damage to a natural gas transmission pipeline, operated by WBI, for the purpose of determining whether there was a violation of North Dakota Century Code Chapter 49-23, the One-Call Excavation Notice System.

IV

Advocacy Staff's investigation included interviews with North Dakota One Call (One Call) employees. The investigation also included a review of WBI's Incident Report filed with the U.S. Department of Transportation (WBI Incident Report), and Mountrail County Sheriff Department's Investigation Report.

V

Based on WBI's Incident Report, Advocacy Staff determines that on 08 November 2010, Aevenia personnel began an excavation, as defined under North Dakota Century Code section 49-23-01 (7) to install underground electrical cable and that, at approximately 12:57 p.m. on that day, Aevenia equipment struck WBI's eight inch natural gas transmission pipeline.

VI

North Dakota Century Code § 49-23-04 states:

Except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice at least forty-eight hours before beginning any excavation, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator. If an operator determines more time is necessary for location, the operator may request a twenty-four-hour extension of the excavation or location notice by notifying the notification center. The notification center shall notify the excavator of the extension. An excavation begins the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice.

VII

Based on interviews with One Call employees and review of One Call records, Commission Staff concludes that Aevenia personnel did not provide an excavation or location notice at least forty-eight hours before the excavation as required by state law.

VIII

Based on WBI's Incident Report, Advocacy Staff determines that Aevenia did not notify WBI of the excavation and, therefore, there could have been no agreement between Aevenia and WBI under North Dakota Century Code Section 49-23-04 (1) prior to excavation that would relieve Aevenia of its obligation to provide excavation notice at least forty-eight hours before the excavation.

IX

Advocacy Staff has no reason to conclude that the excavation was made in a time of emergency under North Dakota Century Code Section 49-23-04 (4), which would allow the excavator to give notification after the start of the excavation.

X

Aevenia violated North Dakota Century Code Section 49-23-04 by failing to contact the notification center, North Dakota One Call, and provide an excavation or location notice at least forty-eight hours before beginning its excavation.

XI

North Dakota Century Code § 49-07-01.1 states:

Any person who violates any statute, commission order, or commission rule which applies to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, 24-09, 32-25, and 51-05.1, titles 60 and 64, and title 49 except for chapter 49-22, shall, in addition to any other penalty provided, be subject to a civil penalty of not to exceed five thousand dollars. The civil penalty may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.

XII

The North Dakota Public Service Commission Damage Prevention Plan states:

1. The following criteria must be used by Commission staff to determine if a civil penalty should be proposed when filing a formal complaint:
 - a. The nature, circumstances and severity of the complaint;
 - b. The degree of suspected fault on the part of the respondent;
 - c. The respondent's history of prior violations or complaints;
 - d. The respondent's ability to pay;
 - e. Any good faith effort by the respondent in attempting to achieve compliance; and
 - f. The effect the penalty may have on the respondent's ability to continue in business.

XIII

Based on WBI's Incident Report and Mountrail County Sheriff's Department Investigation Report, Commission Staff determines that the damage to WBI's transmission pipeline operating at 650 pounds per square inch gage resulted in the release of natural gas, one fatality, two injuries, and a shutdown of WBI's pipeline.

XIV

The Commission has no record of previous violations or complaints concerning excavation by Aevenia.

XV

North Dakota Century Code section 28-32-21(e) requires that Aevenia must serve its answer to this complaint upon the Commission within twenty days after service of the complaint on Aevenia, or the Commission may deem the complaint to be

admitted. Answers must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure.

Prayer for Relief

North Dakota Public Service Commission Staff seeks the following relief from the North Dakota Public Service Commission:

1. A determination that Aevenia, Inc. violated North Dakota Century Code Chapter 49-23 by failing to comply with the One Call procedures outlined in North Dakota Century Code § 49-23-04.
2. A civil penalty of \$5,000.00.
3. Such other relief that the Commission finds just and proper.

Dated this 20th day of October, 2011

Public Service Commission Advocacy Staff

By: Illona A. Jeffcoat-Sacco
Illona A. Jeffcoat-Sacco (ID No. 03315)

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