

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Aevenia Inc.
Damage Prevention Enforcement**

Case No. GS-11-664

CONSENT ORDER

November 5, 2011

The North Dakota Public Service Commission (Commission) has determined as follows:

1. Aevenia, Inc. (Aevenia) is a Minnesota corporation with principal offices at 3030 24th Avenue S., Moorhead, Minnesota, 56560.
2. Williston Basin Interstate Pipeline Company (WBI) is a corporation with principle offices at 1250 West Century Avenue, Bismarck, North Dakota, 58503.
3. Commission Staff conducted an investigation into the November 08, 2010, third party damage in Mountrail County, North Dakota, TWN 158N, R94W, Section 7, SW1/4, of a natural gas transmission pipeline operated by WBI, for the purpose of determining whether Aevenia violated the North Dakota Century Code Chapter 49-23, the One-Call Excavation Notice System.
4. North Dakota Public Service Commission Advocacy Staff's (Advocacy Staff) investigation included interviews with North Dakota One Call (One Call) employees. The staff investigation also included a review of the Incident Report WBI filed with the U.S. Department of Transportation (WBI Incident Report), and Mountrail County Sheriff Department's Investigation Report.

5. Based on WBI's Incident Report, Advocacy Staff determined 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, during excavation at approximately 12:57 p.m., Aevenia equipment struck WBI's eight inch natural gas transmission pipeline.

6. 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.

7. North Dakota Century Code section 28-32-22 states:

Unless otherwise prohibited by specific statute or rule, informal disposition may be made of any adjudicative proceeding, or any part or issue thereof, by stipulation, settlement, waiver of hearing, consent order, default, alternative dispute resolution, or other informal disposition, subject to agency approval. Any administrative agency may adopt rules of practice or procedure for informal disposition if such rules do not substantially prejudice the rights of any party. Such rules may establish procedures for converting an administrative matter from one type of proceeding to another type of proceeding.

8. North Dakota Administrative Code section 69-02-04-05 states:

In any proceeding in which the commission is authorized to act after opportunity for hearing, opportunity is afforded by service of notice fixing a reasonable period of time within which any person desiring to be heard may file a protest or request for a hearing. If a protest or request for hearing is not filed within the time provided, the commission may dispose of the matter on the basis of the pleadings, other submittals, and the studies and recommendations of the staff. A party not requesting oral hearing in the party's pleading is deemed to have

waived a hearing for the purpose of the decision, but not for the purpose of applying for rehearing with respect to the decision. If a person requests a hearing but does not show good cause, the commission may determine the matter without a hearing.

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

10. Based on WBI's Incident Report, Advocacy Staff determined 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.

11. Advocacy Staff concluded that the excavation was not being made in a time of emergency under North Dakota Century Code Section 49-23-04(4), allowing the excavator to give notification after the start of the excavation.

12. 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.

13. The Commission is authorized by North Dakota Century Code section 49-07-01.1 to impose a fine of up to \$5,000 for violations of the North Dakota One Call law.

14. Aevenia acknowledges that at the time of signing the Consent to Entry of Order, it was aware of or had been advised of its rights to a hearing in this matter, to consult an attorney, to present argument to the Commission, and to appeal from any

adverse determination after a hearing, and Respondent Aevenia expressly waives those rights.

15. There are no covenants, promises, undertakings, or understanding other than as specifically set forth in this Order.

16. For purposes of resolving this matter, without further administrative proceedings, Aevenia and the Commission have agreed to enter into the following order.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

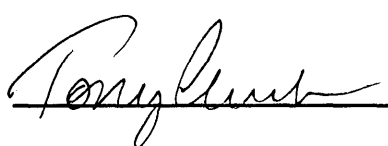
1. Aevenia, Inc. agrees to pay a fine of \$5000 payable to the North Dakota Public Service Commission within ten business days of the effective date of this Order.

DATED this 7th day of DECEMBER, 2011.

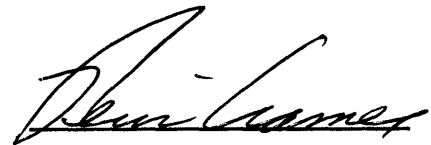
PUBLIC SERVICE COMMISSION



Brian Kalk
Commissioner



Tony Clark
Chairman



Kevin Cramer
Commissioner


CONSENT TO ENTRY OF ORDER

The undersigned, on behalf of Aevenia, Inc. states that he is authorized to act on behalf of Aevenia, Inc. and bind Aevenia, Inc. for purposes of this Consent Order, that he has read the foregoing Consent Order, that he knows and fully understands its content and effect, that he has been advised of the right to a hearing in this matter, the right to be represented by legal counsel, the right to present evidence and arguments to

the Commission, and the right to appeal from an adverse determination after hearing; and that by signing this Consent to Entry of Order he waives those rights in their entirety on behalf of Aevenia, Inc. and consents to entry of this Order by the North Dakota Public Service Commission. It is further expressly understood that this Order constitutes the entire settlement agreement between the parties, there being no other promises or agreements, either express or implied.

DATED this 22 day of November, 2011.

Aevenia, Inc.

By 

Its Secretary
{TITLE}