



Public Service Commission

State of North Dakota

COMMISSIONERS

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Randy Christmann
Julie Fedorchak

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14 March, 2013

Steve Thompson
Phillips and Jordan, Incorporated
6621 Wilbanks Rd
Knoxville, TN 37912-1314

Re: Third Party Damage Complaint
Case No. GS-13-106

Dear Mr. Thompson:

Thank you for visiting with me on March 12, 2013 concerning the WBI Energy Transmission, Inc. pipeline incident near Alexander, North Dakota. Enclosed is a copy of a Third Party Damage Complaint against Phillips and Jordan, Incorporated received by the North Dakota Public Service Commission on March 8, 2013 from North Dakota Public Service Commission Natural Gas Safety Inspector/Program Manager.

You indicated that Phillips and Jordan would not contest the complaint and would sign a consent agreement that the Commission could consider as resolution of the complaint. The Consent Order is enclosed. Please review the Order, sign and date at the bottom of the last page, make a copy for your records (optional), and return the original to the Commission by March 22, 2013.

Best Regards,

Patrick Fahn
Director - Compliance and Competitive Markets



THIRD PARTY DAMAGE COMPLAINT
 Public Service Commission
 SFN 59067 (11-12)

PART A – WHO IS SUBMITTING THIS COMPLAINT

Information Being Submitted By <input type="checkbox"/> Individual <input checked="" type="checkbox"/> Company*	Company/Organization North Dakota Public Service Commission	Person Filing Information Aaron Morman	Position State Natural Gas Pipeline Safety Inspector/Program Manager	
Address of Person Filing Information 12th Floor, Dept 408 600 E. Boulevard Ave	City Bismarck	State ND	Zip Code 58505-0480	
Telephone Number 701-220-5779 cell 7-1-328-4077 office	Email Address aarmorman@nd.gov		Date March 8, 2013	

PART B – WHO ALLEGEDLY VIOLATED THE ONE-CALL REGULATIONS

Name of Excavator Phillips and Jordan, Incorporated		Telephone Number 865-688-8342 Steve Thompson	
Address 6621 Wilbanks RD	City Knoxville	State TN	Zip Code 37912-1314
Name of Entity for Which Excavation Was Performed		Telephone Number	
Address	City	State	Zip Code

PART C – TIME AND LOCATION OF THE EVENT

Date and Time of Event 1/26/3013, 10:10 AM CST	Address of the Excavation and/or Damage 3.5 miles East of Alexander, ND SW 1/4 of Section 35 T151N R101W		
County McKenzie	City Alexander	State ND	Zip Code 58831

PART D – FACILITY INVOLVED

Type of Facility Involved Natural Gas Transmission Pipeline	Operator of Facility and Contact Person (if known) WBI Energy Transmission, Inc.		
Address 1250 W. Century Ave, P.O. Box 5601	City Bismarck	State ND	Zip Code 58506-5601
Telephone Number 701-530-1600	Email Address (if known) kent.kahl@wbenergy.com		
Brief Description of Facility Involved WBI Energy Transmission, Inc. (WBI) 4" Steel High Pressure Watford City Lateral Natural Gas Transmission pipeline located 3.5 miles East of Alexander, ND.			

PART E – DAMAGE (If applicable)

Fatalities 0	Injuries 0	Length of Hospitalization, If Applicable N/A
Estimated Value of Property Damage: \$ See Damage Estimate Values in Part H, Description of Events		Number of Customers Affected 1000
Damaged Within <input type="checkbox"/> Public Property <input checked="" type="checkbox"/> Private Property		Photos of Damaged Facility <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If yes, please include copies)

PART F – EXCAVATION

Was a locate requested from North Dakota One-Call?	
<input checked="" type="checkbox"/> Yes Locate Ticket Number 1300 4270 <input type="checkbox"/> No <input type="checkbox"/> Unknown	Start Date on Ticket 1/23/2013
Did excavator wait until the start date/time on the ticket before commencing excavation?	
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> N/A	
Were buried facilities exposed by hand or non-invasive equipment prior to excavation?	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> N/A	

PART G – MARKING

Were facilities marked?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> N/A
Were utility/facility marks visible in the area of excavation?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> N/A
Were the utility/facilities marked correctly?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> N/A
Was the marking complete prior to the start time on the ticket?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> N/A
Did the excavator pre-mark with white paint?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> N/A
Was the facility marked accurately within 24 inches horizontally?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> N/A
Did the excavator use reasonable care to maintain locate marks for the life of project?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unknown <input type="checkbox"/> N/A

PART H – DESCRIPTION OF EVENT

<p>Description of Event</p> <p>I received a phone call from Kent Kahl, D.O.T. Compliance Supervisor for WBI Energy Transmission, Inc. (WBI) on January 26, 2013 at 2:10 PM CST, to report that WBI's 4" Watford City Lateral Transmission pipeline had been damaged by the excavation contractor Phillips and Jordan, Incorporated. (Phillips and Jordan)</p> <p>The contractor was performing excavation work in the vicinity of WBI's pipeline using a bulldozer with ripping spikes when they damaged the pipeline which resulted in the release of natural gas and the loss of natural gas service to an estimated 1000 residential and commercial customers in the towns of Watford City, Arnegaard, and Alexander, ND.</p> <p>There was a One-Call ticket, #13004270, in effect. The contractor was performing excavation activities directly over the Natural Gas transmission line and according to Kent Kahl of WBI, the contractor had not exposed the line prior to hitting the line.</p>
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Description of Event Continued

According to the North Dakota One-Call Excavation Notice System, Chapter 49-23-05, paragraph 5, the contractor did not conduct the excavation in a careful and prudent manner by not exposing the facility prior to excavating above it. The contractor notified the operator, WBI, as soon as was reasonably possible and took immediate action to protect the public and property and to minimize the hazard until arrival of the operator's personnel.

WBI dispatched personnel to the damaged line site to isolate and shutdown the pipeline for repairs. The Local Distribution Company (LDC) was also dispatched to shut off gas services to the affected properties and customers prior to reestablishing natural gas service when the transmission line repairs were completed and the transmission line was put back into service. The transmission line repairs were started at 2:45 PM and completed at 7:05 PM on January 26, 2013. The LDC restored service to most of it's customers at about 9:45 AM on January 27, 2013 with the last 5 customers remaining at about 5:30 PM on January 28, 2013. To date, the estimated expense incurred by this incident to WBI is \$16,600.00 (not including loss of gas), and by the LDC is \$164,040.33. The cost totals for WBI and the LDC are not finalized and no payments have been received from the contractor by WBI or the LDC as of this date.

According to the North Dakota One-Call Excavation Notice System, Chapter 49-23-06, Damage to Facilities-Penalty, Paragraph 2a, "If an excavator fails to comply with this chapter or damages an underground facility, the excavator is liable for all damages caused by the failure to comply with this chapter and for all damages to the facilities and must reimburse the operator for the cost of repair and restoration, loss of product, and interruption of service occurring because of the damage or injuries to the facilities, together with reasonable costs and expenses of suit, including reasonable attorney fees."

PART I - SIGNATURE

Signature of Person Filing Complaint <i>Carol A. Morneau</i>	Date 3/8/2013
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Please include additional documents and photos, if applicable.

*If you are filing on behalf of a company, please provide information supporting your authority to file this complaint.

Send Completed, Original Complaint To:
Public Service Commission
600 E Boulevard Ave Dept 408
Bismarck ND 58505-0480
Telephone: (701) 328-2400

Email to the Commission

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Phillips and Jordan, Incorporated
Damage Prevention Enforcement**

Case No. GS-13-106

CONSENT ORDER

March 14, 2013

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

1. Phillips and Jordan, Incorporated (Phillips) is a North Carolina corporation with principal offices at 6621 Wilbanks Road, Knoxville, Tennessee 37912-1314. Its registered agent in North Dakota is C T Corporation System located at 314 E. Thayer Avenue, Bismarck, North Dakota 58501-4018.
2. WBI Energy Transmission, Inc. (WBI) is a Delaware corporation with principle offices at 1250 West Century Avenue, Bismarck, North Dakota, 58503.
3. North Dakota Public Service Commission Staff (Staff) conducted an investigation into the January 26, 2013, third party damage, at a location 3.5 miles east of Alexander in McKenzie County, North Dakota, SW1/4 of Section 35, T151N, R101W, of a natural gas transmission pipeline owned and operated by WBI, for the purpose of determining whether a violation of North Dakota Century Code Chapter 49-23, the One-Call Excavation Notice System, has occurred. The incident resulted a the loss of natural gas supply to approximately 1000 customers in the towns of Watford City, Arnegard and Alexander, North Dakota. Staff's investigation included interviews with North Dakota One Call (One Call) employees.

4. On January 17, 2013, Phillips requested a facility locate for the installation of a salt water disposal site with work to begin January 23, 2013 (One-Call Ticket No. 13004270). A One Call ticket is valid for 10 days and therefore was valid for the construction activities that took place on January 26, 2013.

5. Staff was first informed of the incident through a phone call received from Kent Kahl, DOT Compliance Supervisor for WBI on the afternoon of the outage.

6. Based on discussions with WBI, Staff determined that on January 26, 2013, Phillips personnel were performing an excavation as defined under North Dakota Century Code section 49-23-01(7). Phillips was performing excavation activities directly over WBI's natural gas transmission line and had not exposed the line prior to the excavation activities. Phillips damaged WBI's natural gas transmission line at approximately 10:10 a.m. central time.

7. North Dakota Century Code § 49-23-05 (5) states:

To avoid damage to and minimize interference with underground facilities in and near the construction area, an excavator shall: Conduct the excavation in a careful and prudent manner.

8. North Dakota Century Code § 49-23-06 (2a) states:

If an excavator fails to comply with this chapter or damages an underground facility, the excavator is liable for all damages caused by the failure to comply with this chapter and for all damages to the facilities and must reimburse the operator for the cost of repair and restoration, loss of product, and interruption of service occurring because of the damage or injury to the facilities, together with reasonable costs and expenses of suit, including reasonable attorney's fees.

9. 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.

10. 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.

11. Based on interviews with One Call employees and WBI, Staff concluded that Phillips personnel violated North Dakota Century Code Section 49-23-05 (5) by failing to conduct the excavation in a careful and prudent manner.

12. 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.

13. Phillips 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 evidence and argument to the Commission, and to appeal from any adverse determination after a hearing, and Respondent Phillips expressly waives those rights.

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

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

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Phillips agrees to pay a fine of \$3000 payable to the North Dakota Public Service Commission within ten business days of the effective date of this Order.

DATED this ___ day of _____, 2013.

PUBLIC SERVICE COMMISSION

Randy Christmann
Commissioner

Brian P. Kalk
Chairman

Julie Fedorchak
Commissioner

CONSENT TO ENTRY OF ORDER

The undersigned, on behalf of Phillips and Jordan, Incorporated states that he is authorized to act on behalf of Phillips and Jordan, Incorporated and bind Phillips and Jordan, Incorporated 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 Phillips and Jordan, Incorporated 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 ___ day of _____, 2013.

Phillips and Jordan, Incorporated

By _____

Its _____
{TITLE}