

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Philips and Jordan, Inc.
Damage Prevention Enforcement

Case No. GS-13-106

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 **30th** day of **April, 2013**, 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:

Consent Order

The envelope was addressed as follows:

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

Certified No. 7012 1640 0002 4650 0312

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

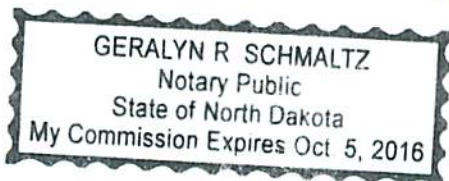


Subscribed and sworn to before me
this **30th** day of **April, 2013**



Notary Public

SEAL



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:

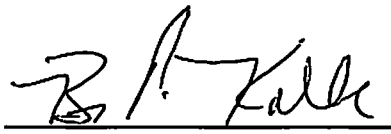
1. Phillips agrees to pay a fine of \$3000 payable to the North Dakota Public Service Commission within ten business days of the effective date of this Order.

DATED this 24th day of April, 2013.

PUBLIC SERVICE COMMISSION



**Randy Christmann
Commissioner**



**Brian P. Kalk
Chairman**



**Julie Fedorchak
Commissioner**

CONSENT TO ENTRY OF ORDER

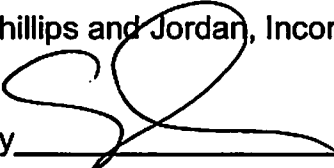
The undersigned, on behalf of Phillips and Jordan, Incorporated (Phillips) states that he is authorized to act on behalf of Phillips and bind Phillips for purposes of this Consent Order, that he has read the foregoing Consent Order, that he knows and fully understands its content and effect, that he 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 consents to entry of this Order by the North Dakota Public Service Commission.

Phillips, by signing this Consent to Entry of Order, does not stipulate to each and every fact alleged in the underlying Third Party Complaint, including, but not limited to, facts alleged regarding damage amounts claimed; nor does Phillips and Jordan, Incorporated waive any right to contest particular facts alleged in the Third Party Complaint, or present defenses, or evidence, or argument in any subsequent proceeding regarding the subject matter of the Complaint.

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 8th day of APRIL, 2013.

Phillips and Jordan, Incorporated

By  STEVE THOMPSON

Its VICE PRESIDENT, SAFETY + RISK MANAGER
{TITLE}