

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
WBI Energy Transmission, Inc.
Damage Prevention Enforcement**

Case No. GS-13-129

CONSENT ORDER

April 16, 2013

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

1. WBI Energy Transmission, Inc. (WBI) is a Delaware corporation with principal offices at 1250 W Century Avenue, Bismarck, ND 58506-5601. Its registered agent in North Dakota is C T Corporation System located at 314 E. Thayer Avenue, Bismarck, North Dakota 58501-4018.
2. Aevenia, Inc. (Aevenia) is a Minnesota corporation with principal offices at 3030 24th Avenue S. in Moorhead, MN 56560-5933.
3. On the evening of January 28, 2013, Kent Kahl, DOT Compliance Supervisor for WBI, telephonically reported to North Dakota Public Service Commission Staff (Staff) a damage incident that occurred at 3910 94th Avenue SW, approximately 3.5 miles south of Taylor in Stark County, North Dakota. The incident occurred at approximately 5:35 p.m. central time when excavator Aevenia hit and punctured a 2 inch high pressure natural gas lateral transmission pipeline that is owned and operated by WBI. The incident resulted in the loss of natural gas supply to approximately 111 residential and commercial customers in Taylor, North Dakota.

4. Staff conducted an investigation into the January 28, 2013 damage incident for the purpose of determining any violation of North Dakota Century Code Chapter 49-23, the One-Call Excavation Notice System, had occurred.

5. North Dakota Century Code § 49-23-04 (1) 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....

6. Excavator Aevenia contacted the One-Call National Ticket Management System (NTMS) on Monday, January 21, 2013 and provided a start date of January 24, 2013 for "excavation on the E side of the road from the center of the farmyard mark out 100ft both sides of the red staked route heading E approx. 2500ft." One-Call Ticket No. 13004602 was issued to Aevenia on January 21, 2013.

7. North Dakota Century Code § 49-23-04 (3g) states:

An excavator may not use a location more than ten days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected.

8. Based on discussions with WBI, Staff determined that on January 28, 2013, Aevenia had performed an excavation as defined under North Dakota Century Code section 49-23-01(7). The January 28, 2013 incident occurred within ten days of the January 24, 2013 planned excavation date.

9. North Dakota Century Code § 49-23-04 (3a) states:

An operator, within forty-eight hours, or any extension of that period, after receiving an excavation notice from the center, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator, shall locate and

mark or otherwise provide the approximate horizontal location of the underground facilities of the operator.

10. WBI confirmed with the North Dakota One-Call NTMS that it had marked its underground facilities on January 21, 2013 at 11:24:42.

11. In an April 4, 2013 response to the Commission, WBI states that it accepts responsibility for the incident. The response also indicates that the employee that was involved in this incident was immediately disqualified from performing additional line locates, that WBI is in the process of providing all applicable field personnel with internet access to up-to-date information about WBI's facilities and to the One-Call NTMS, and WBI has made all of its line locators aware of the incident and is using the incident as an example in its training program.

12. North Dakota Century Code § 49-23-04 (3b) states:

For purposes of this section, the approximate horizontal location of the underground facilities is a strip of land two feet [60.96 centimeters] on either side of the underground facilities. This subdivision does not apply to an underground facility to convey water.

13. Based on discussions with WBI, Staff determined that WBI personnel located and marked WBI's main pipeline in the planned excavation area reported by Aevenia, but failed to locate and mark a WBI lateral natural gas transmission line that provides natural gas to the town of Taylor. During its excavation, Aevenia damaged WBI's natural gas lateral transmission line serving Taylor.

14. 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.

15. 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.

16. Based on interviews or correspondence with One Call, Aevenia, and WBI personnel, Staff concluded that WBI violated North Dakota Century Code Section 49-23-04 by failing to mark the location of an underground facility.

17. 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.

18. WBI 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 WBI expressly waives those rights.

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

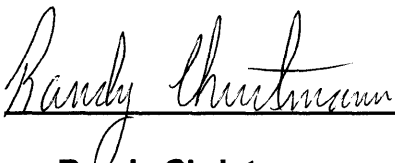
20. For purposes of resolving this matter, without further administrative proceedings, WBI and the Commission have agreed to enter into the following order.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

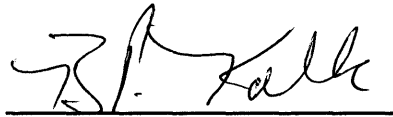
1. WBI agrees to pay a fine of \$3,000 payable to the North Dakota Public Service Commission within ten business days of the effective date of this Order.

DATED this 24th day of April, 2013.

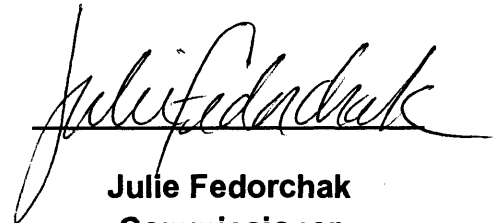
PUBLIC SERVICE COMMISSION



**Randy Christmann
Commissioner**



**Brian P. Kalk
Chairman**



**Julie Fedorchak
Commissioner**

CONSENT TO ENTRY OF ORDER

The undersigned, on behalf of WBI Energy Transmission, Inc. (WBI) states that he is authorized to act on behalf of WBI and bind WBI 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 WBI and consents to entry of this Order by the North Dakota Public Service Commission.

WBI, by signing this Consent to Entry of Order, does not stipulate to each and every fact alleged in the Complaint; nor does WBI Energy Transmission, Incorporated waive any right to contest particular facts alleged in the 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 16 day of April, 2013.

WBI Energy Transmission, Inc.

By Brian D. Haugen

Its EVP + COO
{TITLE}