

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE UNDERGROUND )	
PIPELINE PROTECTION ADVISORY )	CAUSE NO. 44596
COMMITTEE CASE NO. 4731 AND NOTICE OF )	
THE COMMISSION'S INTENT TO RESCIND )	APPROVED:
ITS DECEMBER 10, 2014 ORDER )	
CONCERNING CASE NO. 4731 )	

FEB 25 2015

ORDER OF THE COMMISSION

**Presiding Officers:**

**Carol A. Stephan, Commission Chair**

**Loraine L. Seyfried, Chief Administrative Law Judge**

Based upon a letter received from the General Counsel of the Indiana Utility Regulatory Commission ("Commission") and pursuant to Ind. Code § 8-1-2-72, the Commission hereby commences this Cause and notifies the City of Gary, Indiana ("City of Gary") of its intent to rescind its December 10, 2014 Order in Case No. 4731 upholding the findings of violation by the Commission's Pipeline Safety Division ("Division") and approving the recommendations of the Underground Pipeline Protection Advisory Committee ("Advisory Committee").

**1. Commission Jurisdiction.** Under Ind. Code § 8-1-26-23(k) and 170 IAC 5-5-3, the Commission has jurisdiction to uphold or reverse a finding of violation of Ind. Code ch. 8-1-26 by the Division and to approve or disapprove the penalty recommended by the Advisory Committee. The Commission also has general authority to rescind, alter, or amend any of its orders upon notice and after an opportunity to be heard. Ind. Code § 8-1-2-72. Therefore, the Commission has jurisdiction over the City of Gary and the subject matter of this proceeding.

**2. Background and Procedural History.** On December 10, 2014, the Commission issued an Order upholding the finding of the Division that the City of Gary failed to provide notice of an excavation that occurred on December 12, 2012, in violation of Ind. Code § 8-1-26-16(g). The Order also approved the Advisory Committee's recommendation that the excavator provide training for its personnel.

Since the issuance of the Commission's Order, the Division has learned that the City of Gary was not the excavator involved in the December 12, 2012 excavation. Although the City of Gary notified the Division that it was not the actual excavator in March 2014, the City's correspondence was not considered by the Division or the Advisory Committee due to a clerical error. Letter from Beth Krogel Roads, General Counsel, Commission, to Loraine Seyfried, Chief Administrative Law Judge, Commission (Feb. 9, 2015) (attached).

3. **Notice of Rescission.** Based upon the information submitted by the Commission's General Counsel, the Commission notifies the Division, the Advisory Committee, and the City of Gary that it intends to rescind its December 10, 2014 Order concerning Advisory Committee Case No. 4731. If the Division, the Advisory Committee, or the City of Gary has any objection to the proposed rescission, a request for hearing shall be filed under this Cause within 20 days from the date of this Order.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. Based upon information from the Commission's General Counsel, the Commission intends to rescind its December 10, 2014 Order concerning Advisory Committee Case No. 4731.

2. Any objection by the Division, the Advisory Committee, or the City of Gary to the Commission's rescission of its December 10, 2014 Order concerning Advisory Committee Case No. 4731 shall be filed within 20 days from the date of this Order.

3. This Order shall be effective on and after the date of its approval.

**STEPHAN, MAYS-MEDLEY, HUSTON AND ZIEGNER CONCUR; WEBER ABSENT:**

APPROVED: FEB 25 2015

I hereby certify that the above is a true  
and correct copy of the Order as approved.



Brenda A. Howe  
Secretary to the Commission

# STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION  
101 W. WASHINGTON STREET, SUITE 1500E  
INDIANAPOLIS, INDIANA 46204-3407

<http://www.in.gov/iurc>  
Office: (317) 232-2701  
Facsimile: (317) 232-6758

February 9, 2015

Loraine Seyfried, Chief Administrative Law Judge  
Indiana Utility Regulatory Commission  
101 W. Washington Street, Suite 1500 E  
Indianapolis, Indiana 46204-3407

Re: Request for Investigation Regarding Underground Plant Protection Advisory Committee  
Case No. 4731, Order issued December 10, 2014

Dear Judge Seyfried:

As General Counsel of the Indiana Utility Regulatory Commission ("Commission"), I respectfully request that the Commission open an investigation into Case No. 4731 in the Order issued December 10, 2014, which upheld a finding of violation by the Commission's Pipeline Safety Division ("Division") and approved the recommendation of the Underground Plant Protection Advisory Committee.

Ind. Code § 8-1-2-72 permits the Commission "at any time" to "rescind, alter, or amend any order fixing any rate or rates, tolls, charges, or schedules, or any other order made by the commission" after notice and opportunity to be heard. The Division recently discovered a material change of fact that differed from the information known to the Division at the time of the Order issuance. Specifically, the Division discovered that the respondent named as the excavator, the City of Gary ("the City"), was not the actual excavator in the matter. Based on this new information, the Division now believes there is insufficient evidence to find the City in violation of Ind. Code § 8-1-26-16(g) and recommends reopening the case to amend the Order accordingly. Please see the timeline below for additional information:

- |                   |  |
|-------------------|--|
| March 8, 2013     | Northern Indiana Public Service Company reported that on December 12, 2012, the City hit and damaged a gas line ( <u>Attachment A</u> ).   |
| August 20, 2013   | The Division completed its investigation summary report in the matter ( <u>Attachment B</u> ). The report noted that the City was in violation of Ind. Code § 8-1-26-16(g) and found the "excavator did not respond to initial notice mailed 7/10/2013." |
| December 17, 2013 | The Indiana Underground Plant Protection Advisory Committee reviewed the case and assessed a penalty of training.  |

Judge Seyfried  
Page 2  
February 9, 2015

- March 6, 2014      The City responded that it was not the actual excavator in the matter (Attachment C). The Division's administrative assistant filed the response in the case files but failed to notify Division staff or legal counsel.
- December 10, 2014      The IURC approved the finding of violation and the recommended penalty in the matter after Division staff recommended approval; both parties were unaware of the City's March 6, 2014, response.
- December 30, 2014      The City contacted legal counsel for the Division inquiring why it was found in violation when it sent proof that it was not the excavator. Division staff reviewed the City's March 6, 2014, response and determined that the City was not the actual excavator in the case.

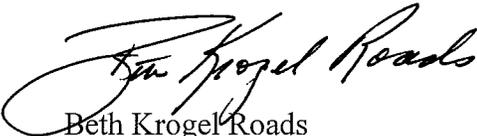
The bottom line is that the City was not afforded an opportunity to be heard, as the information it sent in the matter was not considered by the Division or the Commission.

The Commission has the authority to reopen this matter, and it is my recommendation it do so.

Please contact me if you have any questions or if you need any additional information.

Thank you.

Sincerely,



Beth Krogel Roads  
General Counsel  
Indiana Utility Regulatory Commission

cc:    DeAnna Poon, Assistant General Counsel  
       Steve Allen, Pipeline Safety Division Director  
       Gregory L. Thomas, Esq., City of Gary Law Department

Enclosures


**DAMAGE INFORMATION REPORT – PIPELINE SAFETY DIVISION**

 State Form 54122 (R2 / 7-11)  
 INDIANA UTILITY REGULATORY COMMISSION

 Submitted to IURC-Pipeline Safety on: Mar 8, 2013


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**Who is submitting this information?**

 Name of person providing this information: Carrie Ludwig (NIPSCO)

 Business address (*number and street*): 3511 East 15th Avenue

 City, State, and ZIP code: Gary, IN 46403

 Telephone number (*area code*): (219) 962-0422

 Fax number (*area code*): (219) 962-0404

 E-mail address: cludwig@nisource.com


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**Excavator Information, if known**

 Full name: City of Gary

 Business address (*number and street*): 401 Broadway

 City, State, and ZIP code: Gary, IN 46402

 Telephone number (*area code*): (219)881-5090

 Fax number (*area code*): \_\_\_\_\_

E-mail address: \_\_\_\_\_

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**Excavation or Demolition Information**

 Excavator type: Municipality

 Excavation or demolition equipment: Backhoe/Trackhoe

 Type of work performed: Bldg. Demolition

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**Date and Location of Damage**

Date of damage (*month, day, year*): Dec 12, 2012

County: Lake

City: Gary

Street address (*number and street, city, state, and ZIP code*):  
436 McKinley Street

Nearest intersection: W 5th Avenue

Right of way where damage occurred: Unknown/Other

Was there a release of product? Yes

If yes, was there an ignition of product? No

Were evacuations necessary as a result of release? No

If yes, how many evacuated? \_\_\_\_\_

Was there a customer service interruption? No

If yes, how many affected? \_\_\_\_\_

Time to restore service (*in hours*): \_\_\_\_\_

Enter number of injuries, if applicable and known: \_\_\_\_\_

Enter number of fatalities, if applicable and known: \_\_\_\_\_

Property damage, Estimate \$ \_\_\_\_\_

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**Affected Facility Information**

What type of pipeline was damaged? Natural Gas

What was the affected facility? Service/Drop

What was the depth of the facility, in inches? 30

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**Notification, Locating, Marking**

Did excavator request locates prior to commencing work? No

Enter Indiana 811 ticket number, if known: \_\_\_\_\_

Was the locate request completed within two working days?

If locates were performed, were they done so by a contractor or pipeline employee? Unknown/Other

If a contractor locator, enter the company name, if known: \_\_\_\_\_

Were facility marks visible in the area of excavation? No

Were facilities marked correctly? Unknown/Other

Type of markings used:

If other, please specify: \_\_\_\_\_

Was site marked by "White Lining"? No

Were special instructions part of the locate request?

Were maps used to complete the locate request?

Were pipeline company representatives on site during excavation? No

Did the excavator notify the operator in the event of this damage? Yes

Did the excavator notify Indiana 811 in the event of this damage? No

Did the excavator notify 911 in the event of a release of product? Unknown/Other

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**Description of Cause**

Select from the list the most accurate cause for the damage: --No notification made to the one-call center

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**Additional Comments**

Emergency ticket# 1212121759.

## STATE OF INDIANA



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101 W. WASHINGTON STREET, SUITE 1500E  
INDIANAPOLIS, INDIANA 46204-3407

<http://www.in.gov/iurc>  
Office: (317) 232-2701  
Facsimile: (317) 232-6758

## Pipeline Safety Division Investigation Report

### Investigation regarding: City of Gary

UPPAC Database Record ID: 4731

Report Date: 8/20/2013

Investigator: Mike Orr

Damage Date: 12/12/2012

Damage Address: 436 Mckinley Street, Gary, Lake

### The Parties

Excavator: City of Gary

Address: 401 Broadway, Gary, In 46402

Facility Owner: NIPSCO

### Pipeline Facility

Facility Type: Natural Gas

Facility Function: Service/Drop

Type of Equipment: Backhoe/Trackhoe

Type of Work Performed: Demolition

### Damage Impact

Product Release: Yes

Ignition: No

Service Interruption: False

Number of Customers Affected: 0

Injuries: 0

Fatalities: 0

Repair Cost (if known): \$

### Excavator Activities/Cause of Damage Information:

Excavator Request Locates: No

Indiana 811 Ticket Number:

Original Start Date:

Locate Instructions:

Follow-Up Locate Instructions (if applicable):

**Synopsis:** Excavator struck and damaged an underground natural gas service while performing demolition work.

**Findings:** Reported by Carrie Ludwig (NIPSCO); excavator did not respond to initial notice mailed 7/10/2013. The excavator failed to request a locate ticket prior to starting demolition work.

**Conclusion:** There was a failure to provide notice of excavation.

**Violation:** IC 8-1-26-16(g) Failure to provide notice of excavation.



**CITY OF GARY**  
**LAW DEPARTMENT**  
401 Broadway, 1<sup>st</sup> Floor  
Gary, Indiana 46402  
(219) 881-1400/(219) 881-1362 Fax

**KAREN FREEMAN WILSON**  
*Mayor*

**NIQUELLE R. ALLEN**  
*Corporation Counsel*

March 6, 2014

Deanna L. Poon  
Assistant General Counsel  
Indiana Utility Regulatory Commission  
101 W. Washington Street  
Suite 1500  
Indianapolis, IN 46204-3407

Re: Complaint against the City of Gary regarding property located at 436 McKinley,  
Gary, IN  
File number: 4731

Dear Ms. Poon:

This letter serves as the City of Gary's response to the Indiana Utility Regulatory Commission's investigation of the demolition of the property located at 436 McKinley, Gary, IN.

Our investigation indicates that the City was not the responsible party for the demolition of that property. In fact, the demolition was carried out by a demolition company known as IPAR which is located at 3651 West 4<sup>th</sup> Street, Gary, IN 46404.

I have attached a copy of the Notice to Proceed which I have marked as exhibit 1 and enclosed herein.

Hopefully this explanation is satisfactory. However, if you have any further questions or need additional information, I will be happy to provide it.

Sincerely,

A handwritten signature in cursive script that reads "Gregory L. Thomas".

Gregory L. Thomas, Esq.  
Law Department, City of Gary



CITY OF GARY

KAREN M. FREEMAN-WILSON  
Mayor

DEPARTMENT OF REDEVELOPMENT  
GARY REDEVELOPMENT COMMISSION  
839 BROADWAY, SUITE 200  
GARY, INDIANA 46402  
DIRECT: (219) 886-1531  
WWW.GARY.IN.US

JOSEPH A. VAN DYK  
Director

NOTICE TO PROCEED

DATE DECEMBER 11, 2012

WORK ORDER NO. RFQ NO. 2012-11-3

PROPERTY ADDRESS: 436 MCKINLEY STREET

AMOUNT \$7,450.00

PROPERTY TYPE: RESIDENTIAL

# OF UNIT (S) 1

TO: IPAR CONSTRUCTION  
3651 WEST 4<sup>TH</sup> AVENUE  
GARY, INDIANA 46406

You are hereby notified to commence work on DECEMBER 12, 2012, in accordance with the terms of your contract dated DECEMBER 5, 2012 for furnishing all labor, materials, tools, equipment, and supervision services required to carry out the demolition of the above mentioned structure.

The demolition and clean up of the above mentioned structure shall be completed by DECEMBER 19, 2012.

COMMENT \_\_\_\_\_

City of Gary  
Department of Redevelopment  
Demolition Division

Final inspection was completed  
and certified for payment.

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

The above mentioned demolition was  
completed on \_\_\_\_\_ and final  
inspection is hereby requested.

To be completed by Department of  
Department of Redevelopment.

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

ORIGINAL

*[Handwritten signatures]*

STATE OF INDIANA  
INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF AN ORDER )  
APPROVING ADVISORY COMMITTEE )  
RECOMMENDATIONS PURSUANT TO )  
INDIANA CODE CHAPTER 8-1-26. )

APPROVED:

DEC 10 2014

ORDER OF THE COMMISSION

Indiana Code chapter 8-1-26 provides the procedure for the Indiana Utility Regulatory Commission's Pipeline Safety Division ("Division") to find violations of said chapter. Upon review of those findings, the Indiana Underground Plant Protection Advisory Committee ("Advisory Committee") reviews those recommendations and recommends civil penalties in the Case.

The Cases received pursuant to Indiana Code chapter 8-1-26 and ripe for Commission action are attached hereto and collectively referred to as the Advisory Committee Recommendations.

Pursuant to statute, the Advisory Committee has submitted their recommendations to the Commission. The Commission hereby UPHOLDS the findings of violations by the Pipeline Safety Division and APPROVES the recommendations of the Advisory Committee as listed on the attached pages. The Assistant General Counsel to the Division is hereby directed to prepare and send notice to the parties advising them of the determination.

**IT IS SO ORDERED.**

STEPHAN, MAYS-MEDLEY, HUSTON AND ZIEGNER CONCUR; WEBER ABSENT:

APPROVED:            DEC 10 2014

I hereby certify that the above is a true and correct copy of the Order as approved.

*Brenda A. Howe*  
Brenda A. Howe  
Secretary to the Commission

Indiana Underground Plant Protection Advisory  
Committee Recommendation to IURC

Respondent: City of Gary  
Other Party: NIPSCO  
Case No.: 4731  
Date of Advisory Meeting: ~~August 27, 2013~~ Dec 17, 2013  
Date of Damage: December 12, 2012

The IURC Pipeline Safety Division finds the following violation:  
**IC 8-1-26-16(g) - failure to provide notice of excavation**

The Advisory Committee recommends the following penalty:

\_\_\_\_\_ Training or \$750 if fail to properly complete training in timely  
Special instruction \_\_\_\_\_  
Clearance Zone (1) \_\_\_\_\_ **Contacting 811**  
B.S.W.

Additional Information: Selking abstains  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**APPROVED:** Ben Warren  
(initialed) Ben Warren  
Chairman