

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE UNDERGROUND )  
PIPELINE PROTECTION ADVISORY ) CAUSE NO. 44949  
COMMITTEE CASE NO. 13302 AND NOTICE )  
OF THE COMMISSION'S INTENT TO )  
RESCIND ITS DECEMBER 14, 2016 ORDER ) APPROVED: JUN 07 2017  
CONCERNING CASE NO. 13302 )

ORDER OF THE COMMISSION

**Presiding Officers:**

**James D. Atterholt, Chairman**

**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 Kindred Excavating of the Commission's intent to rescind its December 14, 2016 Order in Case No. 13302 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 Kindred Excavating and the subject matter of this proceeding.

2. **Background and Procedural History.** On December 14, 2016, the Commission issued an Order upholding the Division's finding that Kindred Excavating failed to provide notice of excavation in violation of Ind. Code § 8-1-26-16(h). The Order also approved the Advisory Committee's recommendation of a warning letter.

Since issuance of the Commission's December 14, 2016 Order, the Commission has learned that Kindred Excavating was not the excavator at the site where the violation occurred. Letter from Beth E. Helene, General Counsel, Commission, to Loraine Seyfried, Chief Administrative Law Judge, Commission (May 18, 2017) (attached).

3. **Notice of Rescission and Remand.** Based upon the information submitted by the Commission's General Counsel, the Commission notifies the Division, the Advisory Committee, and Kindred Excavating that it intends to rescind its December 14, 2016 Order concerning Advisory Committee Case No. 13302. If the Division, the Advisory Committee, or Kindred Excavating 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. If no objection is filed, the Commission will rescind its December 14, 2016 Order concerning Advisory Committee Case No. 13302.

**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 14, 2016 Order concerning Advisory Committee Case No. 13302.

2. Any objection by the Division, the Advisory Committee, or Kindred Excavating to the Commission's rescission of its December 14, 2016 Order concerning Advisory Committee Case No. 13302 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.

**ATTERHOLT, HUSTON, WEBER, AND ZIEGNER CONCUR; FREEMAN ABSENT:**

**APPROVED: JUN 07 2017**

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

  
\_\_\_\_\_  
**Mary M. Becerra**  
**Secretary of the Commission**

# STATE of INDIANA

INDIANA UTILITY REGULATORY COMMISSION  
101 WEST WASHINGTON STREET, SUITE 1500 EAST  
INDIANAPOLIS, INDIANA 46204-3419



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

May 18, 2017

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

Re: Request to Rescind Order Regarding Underground Plant Protection Advisory Committee Case  
No. 13302, Order issued December 14, 2016

Dear Judge Seyfried:

As General Counsel of the Indiana Utility Regulatory Commission ("Commission"), I respectfully request that the Commission rescind its order regarding Case No. 13302 in the Order issued December 14, 2016, that upheld a finding of violation by the Commission's Pipeline Safety Division ("Division") and approved the recommendation of the Underground Plant Protection Advisory Committee ("UPPAC").

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 matter. Specifically, the Division discovered the respondent named as the excavator, Kindred Excavating, was not the excavator in the matter. Staff received a call from John Kindred from Kindred Excavating on January 12, 2017. Mr. Kindred stated that he was not the excavator in the matter. Staff investigated further, including asking the gas operator in the case, Vectren, if it could provide additional information to confirm or dispute Mr. Kindred's claim. Vectren responded via email on February 3, 2017, confirming the excavator was in fact a different company also named Kindred Excavating, not Mr. Kindred's company (see Attachment A). Division investigator Mike Orr reviewed Vectren's response. Based on this newly learned information, Mr. Orr now believes there is insufficient evidence to find Kindred Excavating in violation of Ind. Code § 8-1-26-16(h) and recommends rescinding the Order (see Attachment B). Similarly, the UPPAC voted to recommend no penalty in the matter (see Attachment C).

The Commission has the authority to reopen this matter, and it is my recommendation that the Commission open an investigation pursuant to Ind. Code 8-1-2.

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

Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Beth E. Helene".

Beth E. Helene  
General Counsel  
Indiana Utility Regulatory Commission

Attachment A

Poon, DeAnna

---

**From:** Bryant, Tracey <TJBryant@Vectren.com>  
**Sent:** Friday, February 03, 2017 9:04 AM  
**To:** Poon, DeAnna  
**Subject:** RE: review of Case 13302

\*\*\*\* This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\*\*

---

DeAnna,

There are two Kindred Excavating – and we had the wrong one on this damage and collection notice. Below is a note from my DPS employee who investigated this for us.

We have corrected the files and records on our end – is there something we can do to help correct on your side? The correct address is below.

+++++

Discussed with Justin Lien. Justin stated the contractor was Kindred Excavating but they would not give him their address so he googled it and that is what came up. He stated they did not want to take blame and were stand-offish. He wonders if there is two different Kindred Excavating but was unsure.

Miranda stated the damaging party address on the FD Form and in the spreadsheet is incorrect and correct contractor is listed below. I have updated the damage address and the damaging party address in the DPS spreadsheet to the correct information. Miranda stated there are two different Kindred Excavating companies.

INBiz info:

## Attachment A

This EXTERNAL email may contain an attachment. Do not open attachments or click on links in emails unless you are certain the source AND content of the email are credible.

Tracey,

We have recently been contacted by Kindred Excavating, the company that Vectren identified as the excavator in Case 13302 (your response is attached). Mr. Kindred claims he works in New Palestine and has never worked in Greenwood, the location of the damage. He said he notified Vectren of this and that the Vectren employee acknowledged it was not his company and said he would straighten things out.

Mike Orr was able to get a dig ticket from Indiana 811 (attached) that shows Ken Wood had a dig ticket for the damage area during that time. We cannot tell from this limited information if this means the excavator was in fact Ken Wood, if Kindred Excavating was piggybacking on Ken Wood's ticket, or something else.

Can you look at your file and let me know if you can either confirm Kindred Excavating was misidentified or whether you have additional proof that it was in fact Kindred Excavating? I really appreciate any information you can provide. I know these facts are a bit confusing, give me a call if you want me to walk you through it.

Thanks!

DeAnna L. Poon  
Assistant General Counsel  
Indiana Utility Regulatory Commission  
(317) 232-6735  
[Dpoon@urc.in.gov](mailto:Dpoon@urc.in.gov)

<13302\_OperatorResponse.pdf>

<13302\_Locateticket.pdf>

This message (including any attachments) is intended only for the use of the individual or entity to which it is addressed and may contain information that is non-public, proprietary, privileged, confidential, and exempt from disclosure under applicable law or may constitute as attorney work product. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, notify us immediately by telephone and (i) destroy this message if a facsimile or (ii) delete this message immediately if this is an electronic communication. Thank you.

**Attachment B**

**Underground Plant Protection Advisory Committee Case No. 13302  
Indiana Utility Commission Order issued December 14, 2016**

**Verified Declaration of Michael A. Orr**

Declarant Michael A. Orr, on this 21<sup>st</sup> day of March, 2017, subject to the penalties for perjury, states that:

1. My name is Michael A. Orr and my business address is 101 West Washington Street, Suite 1500 E, Indianapolis, Indiana 46204.
2. I am employed by the Indiana Utility Regulatory Commission as the Chief Pipeline Safety Engineer of the Pipeline Safety Division. I have been with the Commission since November 13, 1989, and a member of the Pipeline Safety Division since 1995.
3. Since the Indiana Underground Plant Protection Law in Indiana Code chapter 8-1-26 was modified in 2009, I have been the lead Damage Prevention Specialist for the Indiana Utility Regulatory Commission.
4. As part of my duties as Chief Pipeline Safety Engineer, I reviewed the Pipeline Safety Division case number 13302, concerning Kindred Excavating. On August 23, 2016, I prepared an investigation summary report. In my report, I made a determination that Kindred Excavating violated Indiana Code 8-1-26-16(h) for failing to provide notice of excavation.
5. At the time of my determination of violation, I did not have a response from Kindred Excavating. I based my determination in part upon a response provided by Vectren, the operator of the underground pipeline. Vectren state its pipeline was damaged by Kindred Excavating.
6. Since the time of my determination, I received and reviewed a copy of the follow-up response by Vectren emailed February 3, 2017. It explains that the Kindred Excavating listed in the case is not the actual excavator; it is another company with the same name.
7. Had I known these additional facts at the time I made my determination, I would not have found a violation of state law by Kindred Excavating.
8. I understand the Indiana Utility Regulatory Commission assessed a penalty against Kindred Excavating based on a recommendation from the Underground Plant Protection Advisory Committee, which was based on my determination of a violation. By this affidavit, I am recommending that the Underground Plant Protection Advisory committee rescind its penalty recommendation as I no longer believe a violation occurred.
9. Further Declarant sayeth not.

*I, Michael A. Orr, hereby certify, under penalty of perjury, that the above-stated facts are true and correct to the best of my knowledge.*



Michael A. Orr

Attachment C

## Indiana Underground Plant Protection Advisory Committee Recommendation to IURC

---

Respondent: **Kindred Excavating**  
Other Party: **Vectren**  
Case Number: **13302**  
Date of Advisory Meeting: **2/28/2017**  
Date of Damage: **5/10/2016**

The IURC Pipeline Safety Division does not find a violation.

The Advisory Committee recommends the following penalty:

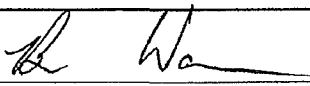
- ☐ Warning letter (*Special instructions:*)
- |                                         |                                          |                                                            |
|-----------------------------------------|------------------------------------------|------------------------------------------------------------|
| <input type="checkbox"/> Clearance Zone | <input type="checkbox"/> Failure to Plan | <input type="checkbox"/> Self-Repair                       |
| <input type="checkbox"/> Damaging Lines | <input type="checkbox"/> Potholing       | <input type="checkbox"/> Using Stakes or Post Hole Diggers |
| <input type="checkbox"/> Dig Tickets    | <input type="checkbox"/> Probing         | <input type="checkbox"/> White Lining                      |
| <input type="checkbox"/> Demolitions    |                                          |                                                            |
- ☐ Training or \$5,000 civil penalty if fail to complete training
- ☐ Civil penalty of \$1,000
- ☐ Civil penalty of \$1,500, can mitigate \$750 by completing training and corrective action plan
- ☐ Civil penalty of \$1,500, can mitigate \$1,500 by completing training and corrective action plan
- ☐ Civil penalty of \$ \_\_\_\_\_
- ☒ Other: **No penalty recommended**

Abstentions:

Additional Information: \_\_\_\_\_

---

APPROVED:

  
Ben Warren  
Chairman