

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Kindred Plumbing and Heating
Damage Prevention Enforcement**

Case No. PU-10-649

CONSENT ORDER

October 12, 2011

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

1. Kindred Plumbing and Heating (Kindred Plumbing) is a North Dakota corporation with principal offices at 302 Woodlawn Drive, Kindred, North Dakota, 58051.
2. Otter Tail Power Company (Otter Tail) is a Minnesota corporation with principle offices at 215 South Cascade Street, Fergus Falls, Minnesota 56537.
3. On December 9, 2010, the Commission received a Third Party Damage Complaint form from Scott Fritz, One Call Administrator for Otter Tail. The complaint alleged a violation by Kindred Plumbing of North Dakota Century Code Chapter 49-23 and is attached as Exhibit 1.
4. North Dakota Century Code Chapter 49-23 codifies the state's One-Call Excavation Notice System law, requiring an excavator to contact the One Call Hotline notification center and provide an excavation or location notice at least forty-eight hours before beginning excavation.
5. North Dakota Century Code section 28-32-22 provides:

28-32-22. Informal disposition.

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.

6. North Dakota Administrative Code section 69-02-04-05 provides:

69-02-04-05. Waiver of hearing - Shortened procedure.

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.

7. On November 9, 2010 Kindred Plumbing was performing an excavation at the Wahpeton, North Dakota airport for the purposes of installing a sewer without first calling North Dakota One Call to obtain a One Call ticket.
8. In the process of the excavation, Kindred Plumbing dug into a primary circuit electric distribution line.
9. On December 13, 2011 North Dakota Public Service Commission Staff forwarded the Third Party Damage Complaint form to Kindred Plumbing for Kindred Plumbing's response.
10. On April 6, 2011, Kindred Plumbing filed its response to the complaint form. The response is attached as Exhibit 2.

11. The Commission is authorized by North Dakota Century Code section 49-07-01.1 to impose a fine of up to \$5,000.

12. Kindred Plumbing 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, to appeal from any adverse determination after a hearing, and Kindred Plumbing expressly waives these rights.

13. Kindred Plumbing has agreed to informal disposition of this matter, without a hearing, as provided under North Dakota Century Code section 28-32-22.

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, Kindred Plumbing and the Commission have agreed to enter into the following order.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Kindred Plumbing pay a fine of \$1,000 payable to the North Dakota Public Service Commission within ten business days of the service date of this Order.

PUBLIC SERVICE COMMISSION

Kevin Cramer	Tony Clark	Brian Kalk
Commissioner	Chairman	Commissioner

CONSENT TO ENTRY OF ORDER

The undersigned, on behalf of Kindred Plumbing and Heating, states that he has authority to bind Kindred Plumbing and Heating and 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 Kindred Plumbing and Heating 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 21 day of Nov., 2011.

Kindred Plumbing and Heating

By Eric Medley

Its Vice President
{TITLE}