

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

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

Case No. PU-12-303



\_\_\_\_\_, 2013

**CONSENT ORDER**

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

1. Kindred Plumbing and Heating, Inc. (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 wholly owned subsidiary of Otter Tail Corporation, a Minnesota corporation with principle offices at 215 South Cascade Street, Fergus Falls, MN 56538-0496.
3. On Friday June 8, 2012 Kindred Plumbing called and obtained North Dakota One Call ticket number 12076901 in order to install a water and sewer extension for the Wahpeton airport with work to begin on Tuesday June 12, 2012. On the morning of Monday June 11, 2012 Otter Tail employee Pat Paulson arrived at the work site to locate Otter Tail's facilities, however the trench had already been excavated at that time; approximately one day prior to its allowed start date. No fatalities, injuries, or damage occurred.
4. On June 15, 2012, the Commission received a Third Party Damage Complaint 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. On June 19, 2012

North Dakota Public Service Commission Staff (Staff) forwarded the Third Party Damage Complaint form to Kindred Plumbing for Kindred Plumbing's response by July 6, 2012.

5. 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 any excavation, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator.

6. 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.

7. 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.

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

9. Kindred Plumbing has a prior violation of North Dakota One Call law, Commission Case No. PU-10-649.

10. 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.

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

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

13. 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 \$1,500 payable to the North Dakota Public Service Commission within ten business days of the service date of this Order.

**PUBLIC SERVICE COMMISSION**

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**Randy Christmann**  
**Commissioner**

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**Brian P. Kalk**  
**Chairman**

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**Julie L. Fedorchak**  
**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 3 day of June, 2013.

Kindred Plumbing and Heating

By [Signature]

Its President  
{TITLE}