

III.

North Dakota Century Code section 49-23-04(1) provides:

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. If an operator determines more time is necessary for location, the operator may request a twenty-four-hour extension of the excavation or location notice by notifying the notification center. The notification center shall notify the excavator of the extension. An excavation begins the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice.

North Dakota Century Code section 49-23-05 provides:

To avoid damage to and minimize interference with underground facilities in and near the construction area, an excavator shall:

1. Maintain a clearance between an underground facility and the cutting edge or point of any mechanized equipment, considering the known limit of control of the cutting edge or point to avoid damage to the facility.
5. Conduct the excavation in a careful and prudent manner.

North Dakota Century Code section 49-23-01(3) provides:

“Careful and prudent manner” means excavating within twenty-four inches [60.96 centimeters] of the outer edges of an underground facility located manually and marked by the owner or operator by stakes, paint, or other customary manner, and supporting and protecting the uncovered facility.

IV.

On November 19, 2013, the Commission received three Third Party Damage Complaint forms from Paul Riely, District Gas Superintendent for MDU, attached as Exhibit 1. Each complaint alleges a violation by Northern of N.D.C.C. chapter 49-23:

One-Call Excavation Notice System. The complaints were assigned Case Numbers GS-13-884, GS-13-885 and GS-13-886.

V.

As alleged by MDU in its complaint assigned Case No. GS-13-884, on September 13, 2013, Northern began an excavation as defined in North Dakota Century Code section 49-23-01(7) at Main and Railroad Avenue in Ross. As a result of this excavation, a natural gas distribution service line was damaged. MDU alleges that the cost to repair this damage was \$341.74 and that one customer was affected. MDU alleges that it has not been reimbursed. After investigation, staff determined that no excavation notice was provided to the NDOC by Northern personnel for work at the location on the date given in the complaint. However, an excavation notice was called in by Dodie Foss of Northern 45 minutes after the damage occurred. The NDOC assigned locate ticket number 13156458 to the excavation notice, attached as Exhibit 2. This is the eighth complaint filed by staff against Northern.

VI.

As alleged by MDU in its complaint assigned Case No. GS-13-885, on October 15, 2013, Northern began an excavation as defined under North Dakota Century Code section 49-23-01(7) at Railroad Avenue and 3rd Street W in Ross. As a result of this excavation a natural gas distribution main line was damaged. MDU alleges that the cost to repair this damage was \$743.38 and that one commercial customer was affected for four hours. MDU alleges that it has not been reimbursed. After investigation, staff determined that no excavation notice was provided to the NDOC by Northern personnel

for work at the location on the date given in the complaint. This is the ninth complaint filed by staff against Northern.

VII.

As alleged by MDU in its complaint assigned Case No. GS-13-886, on October 9, 2013, Northern began an excavation as defined in North Dakota Century Code section 49-23-01(7) at Central Ave E in Ross. As a result of this excavation a natural gas distribution service line was damaged. MDU alleges that the cost to repair this damage was \$421.68 and that two customers were affected for 1.5 hours. MDU alleges that it has not been reimbursed. After investigation, staff determined that on September 26, 2013, Northern personnel provided an excavation notice to the NDOC with work to begin on September 20, 2013. The NDOC assigned locate ticket number 13167425 to the excavation notice, attached as Exhibit 3. This is the tenth complaint filed by staff against Northern.

VIII.

By its December 5, 2013 letter, Staff informed Northern of MDU's November 19, 2013, complaint filings in Case Numbers GS-13-884, GS-13-885, and GS-13-886, and asked for a response by December 26, 2013. Northern's response, received on January 13, 2014 (attached as Exhibit 4), asserts that in case number GS-13-886, their utility probe pierced the poly line while probing even though no excessive force was used.

IX.

Regarding Case Numbers GS-13-884 and GS-13-885, Northern violated North Dakota Century Code section 49-23-04 by failing to provide a location notice at least forty-eight hours before beginning an excavation. Regarding Case GS-13-886, Northern violated North Dakota Century Code section 49-23-05(5) by failing to conduct an excavation in a careful and prudent manner.

X.

North Dakota Century Code section 49-07-01.1 states:

Any person who violates any statute, commission order, or commission rule which applies to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, 24-09, 32-25, and 51-05.1, titles 60 and 64, and title 49 except for chapter 49-22, shall, in addition to any other penalty provided, be subject to a civil penalty of not to exceed five thousand dollars. A violation occurring under chapter 49-23, in addition to any other penalty, is subject to a civil penalty not to exceed twenty-five thousand dollars. The commission shall develop policies for the assessment of penalties under chapter 49-23 which will take into consideration the severity of damages and the conduct of the offender. The civil penalty may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.

XI.

The North Dakota Public Service Commission Damage Prevention Plan states:

D PROPOSED CIVIL PENALTIES:

1. The following criteria must be used by Commission staff to determine if a civil penalty should be proposed when filing a formal complaint:
 - a. The nature, circumstances and severity of the complaint;
 - b. The degree of suspected fault on the part of the respondent;
 - c. The respondent's history of prior violations or complaints;
 - d. The respondent's ability to pay;

- e. Any good faith effort by the respondent in attempting to achieve compliance; and
- f. The effect the penalty may have on the respondent's ability to continue in business.

XII.

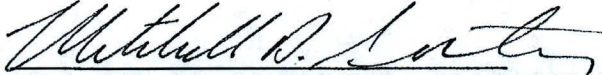
The Respondent must serve an answer to a complaint upon the Complainant and the Commission within twenty days after service of the complaint, or the Commission may deem the complaint to be admitted. Answers must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure.

Prayer for Relief

Based on the foregoing, Staff seeks the following relief:

1. That the Commission find Northern in violation of North Dakota Century Code chapter 49-23 for failing to comply with the One Call procedures outlined in North Dakota Century Code sections 49-23-04 and 49-23-05.
2. That the Commission impose a civil penalty in the amount of \$5000 in Case No. GS-13-884.
3. That the Commission impose a civil penalty in the amount of \$5500 in Case No. GS-13-885.
4. That the Commission impose a civil penalty in the amount of \$5500 in Case No. GS-13-886.
5. Such other relief that the Commission finds just and proper.

Dated this 29th day of October, 2014



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