



Public Service Commission
State of North Dakota

COMMISSIONERS

Brian P. Kalk
Randy Christmann
Julie Fedorchak

Executive Secretary
Darrell Nitschke

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

5 December 2014

Wade Mann, Director
Office of Administrative Hearings
2911 North 14th Street – Suite 303
Bismarck, ND 58503

Re:
Public Service Commission v.
Northern Excavating Co., Inc. (9-13-13 11:00 a.m.)
Damage Prevention Enforcement
GS-13-884

Public Service Commission v.
Northern Excavating Co., Inc. (10-1-13 11:40 a.m.)
Damage Prevention Enforcement
GS-13-885

Public Service Commission v.
Northern Excavating Co., Inc. (10-9-13 17:15 p.m.)
Damage Prevention Enforcement
GS-13-886

Dear Mr. Mann:

Enclosed are three requests for an Administrative Law Judge in the captioned three cases. Hearings have been tentatively scheduled for 3 February 2015. When a Notice of Hearing for each case is issued I will forward those Notices to your office. It is likely that these cases will be consolidated for hearing.

The Administrative Law Judge will serve as a procedural law judge and the hearing will be electronically recorded.

If you have any questions, please contact me. Thank you.

Best regards,


Illona A. Jeffcoat-Sacco
General Counsel

enclosures
c: w/encls. Robert Lindberg



REQUEST FOR ADMINISTRATIVE LAW JUDGE--COMPLAINT
 NORTH DAKOTA OFFICE OF ADMINISTRATIVE HEARINGS
 SFN 17818 (Rev. 06-2007)

Name of Agency, Board, or Commission North Dakota Public Service Commission		
Name of Respondent(s) Northern Excavating Co., Inc.	Address PO Box 1108, Jamestown, ND 58402-1108	Telephone Number (701) 252-5967

The above named agency, board, or commission has taken administrative action pursuant to its authority found in North Dakota Century Code Chapter 49-23 _____ (North Dakota Century Code and/or North Dakota Administrative Code).

The administrative action is more fully described as follows: Hearing to determine if Northern Excavating Co., Inc. violated N.D.C.C. Chapter 49-23, the North Dakota One-Call Law, and if a violation is found, should the Commission impose a civil penalty.
--

Has the respondent been provided a copy of the complaint? Yes No

Attached is a copy of the complaint, related documents and correspondence, and certificate, affidavit or admission of service. If the respondent has otherwise been notified about this administrative action, please explain in the comments section below.

It requests designation of an administrative law judge (please check one):

- To conduct the hearing and issue recommended findings of fact, conclusions of law, and order.
- To serve as a procedural administrative law judge only (no recommended decision). The agency head will be present at the hearing as required by NDCC 28-32-31(5). See NDCC 54-57-04.
- To conduct the hearing, issue findings of fact, conclusions of law, and a final order.

PLEASE MAKE A REQUEST FOR AN ADMINISTRATIVE LAW JUDGE AT LEAST ONE MONTH BEFORE THE HEARING.

Agency Contact Person(s) Illona A. Jeffcoat-Sacco, PSC General Counsel (advisory counsel)	Telephone Number (701) 328-2407
--	------------------------------------

Representation [attorney (or other)] if known:

Agency ND PSC - Mitch Armstrong, SAAG (advocacy staff counsel)	Telephone Number (701) 258-0630
Party Northern Excavating Co., Inc. - Robert Lindberg, President and Registered Agent	Telephone Number (701) 252-5967
Party	Telephone Number

Additional Comments PSC Case No. GS-13-884
The attached Complaint covers all three cases. A separate ALJ request form is being provided for each case.

(For agencies required to use OAH, notice of hearing will be issued by the administrative law judge, unless a procedural administrative law judge is requested. Other requesting agencies and agencies requesting a procedural administrative law judge should first contact OAH about scheduling a hearing. If notice has already been issued, attach a copy of the notice.)

Typed or Printed Name and Title of Requesting Person Illona A. Jeffcoat-Sacco, PSC General Counsel	Date 12/5/2014
Signature of Requesting Person x	Telephone Number (701) 328-2407



REQUEST FOR ADMINISTRATIVE LAW JUDGE--COMPLAINT

NORTH DAKOTA OFFICE OF ADMINISTRATIVE HEARINGS

SFN 17818 (Rev. 06-2007)

Name of Agency, Board, or Commission North Dakota Public Service Commission		
Name of Respondent(s) Northern Excavating Co., Inc.	Address PO Box 1108, Jamestown, ND 58402-1108	Telephone Number (701) 252-5967

The above named agency, board, or commission has taken administrative action pursuant to its authority found in North Dakota Century Code Chapter 49-23 _____ (North Dakota Century Code and/or North Dakota Administrative Code).

The administrative action is more fully described as follows: Hearing to determine if Northern Excavating Co., Inc. violated N.D.C.C. Chapter 49-23, the North Dakota One-Call Law, and if a violation is found, should the Commission impose a civil penalty.
--

Has the respondent been provided a copy of the complaint? Yes No

Attached is a copy of the complaint, related documents and correspondence, and certificate, affidavit or admission of service. If the respondent has otherwise been notified about this administrative action, please explain in the comments section below.

It requests designation of an administrative law judge (please check one):

- To conduct the hearing and issue recommended findings of fact, conclusions of law, and order.
- To serve as a procedural administrative law judge only (no recommended decision). The agency head will be present at the hearing as required by NDCC 28-32-31(5). See NDCC 54-57-04.
- To conduct the hearing, issue findings of fact, conclusions of law, and a final order.

PLEASE MAKE A REQUEST FOR AN ADMINISTRATIVE LAW JUDGE AT LEAST ONE MONTH BEFORE THE HEARING.

Agency Contact Person(s) Illona A. Jeffcoat-Sacco, PSC General Counsel (advisory counsel)	Telephone Number (701) 328-2407
--	------------------------------------

Representation [attorney (or other)] if known:

Agency ND PSC - Mitch Armstrong, SAAG (advocacy staff counsel)	Telephone Number (701) 258-0630
Party Northern Excavating Co., Inc. - Robert Lindberg, President and Registered Agent	Telephone Number (701) 252-5967
Party	Telephone Number

Additional Comments PSC Case No. GS-13-885
The attached Complaint covers all three cases. A separate ALJ request form is being provided for each case.

(For agencies required to use OAH, notice of hearing will be issued by the administrative law judge, unless a procedural administrative law judge is requested. Other requesting agencies and agencies requesting a procedural administrative law judge should first contact OAH about scheduling a hearing. If notice has already been issued, attach a copy of the notice.)

Typed or Printed Name and Title of Requesting Person Illona A. Jeffcoat-Sacco, PSC General Counsel	Date 12/5/2014
Signature of Requesting Person x	Telephone Number (701) 328-2407



REQUEST FOR ADMINISTRATIVE LAW JUDGE--COMPLAINT
 NORTH DAKOTA OFFICE OF ADMINISTRATIVE HEARINGS
 SFN 17818 (Rev. 06-2007)

Name of Agency, Board, or Commission North Dakota Public Service Commission		
Name of Respondent(s) Northern Excavating Co., Inc.	Address PO Box 1108, Jamestown, ND 58402-1108	Telephone Number (701) 252-5967

The above named agency, board, or commission has taken administrative action pursuant to its authority found in North Dakota Century Code Chapter 49-23 _____ (North Dakota Century Code and/or North Dakota Administrative Code).

The administrative action is more fully described as follows: Hearing to determine if Northern Excavating Co., Inc. violated N.D.C.C. Chapter 49-23, the North Dakota One-Call Law, and if a violation is found, should the Commission impose a civil penalty.
--

Has the respondent been provided a copy of the complaint? Yes No

Attached is a copy of the complaint, related documents and correspondence, and certificate, affidavit or admission of service. If the respondent has otherwise been notified about this administrative action, please explain in the comments section below.

It requests designation of an administrative law judge (please check one):

- To conduct the hearing and issue recommended findings of fact, conclusions of law, and order.
- To serve as a procedural administrative law judge only (no recommended decision). The agency head will be present at the hearing as required by NDCC 28-32-31(5). See NDCC 54-57-04.
- To conduct the hearing, issue findings of fact, conclusions of law, and a final order.

PLEASE MAKE A REQUEST FOR AN ADMINISTRATIVE LAW JUDGE AT LEAST ONE MONTH BEFORE THE HEARING.

Agency Contact Person(s) Illona A. Jeffcoat-Sacco, PSC General Counsel (advisory counsel)	Telephone Number (701) 328-2407
--	------------------------------------

Representation [attorney (or other)] if known:

Agency ND PSC - Mitch Armstrong, SAAG (advocacy staff counsel)	Telephone Number (701) 258-0630
Party Northern Excavating Co., Inc. - Robert Lindberg, President and Registered Agent	Telephone Number (701) 252-5967
Party	Telephone Number

Additional Comments PSC Case No. GS-13-886
The attached Complaint covers all three cases. A separate ALJ request form is being provided for each case.

(For agencies required to use OAH, notice of hearing will be issued by the administrative law judge, unless a procedural administrative law judge is requested. Other requesting agencies and agencies requesting a procedural administrative law judge should first contact OAH about scheduling a hearing. If notice has already been issued, attach a copy of the notice.)

Typed or Printed Name and Title of Requesting Person Illona A. Jeffcoat-Sacco, PSC General Counsel	Date 12/5/2014
Signature of Requesting Person X	Telephone Number (701) 328-2407

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.

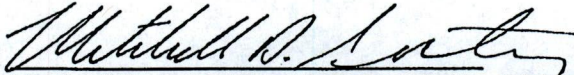
The Respondent must serve an answer to a complaint upon the Complainant and the Commission within twenty days after service of the complaint, or the Commission may deem the complaint to be admitted. Answers must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure.

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



Mitchell D. Armstrong (ND Bar ID No. 05892)

Brian D. Schmidt (ND Bar ID No. 07498)

Special Assistant Attorneys General

122 East Broadway Avenue

P.O. Box 460

Bismarck, ND 58502-0460

(701) 258-0630

Attorneys for Advocacy Staff