

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission **Case No. GS-13-884**
Northern Excavating Co., Inc. (9-13-13 11:00 a.m.)
Damage Prevention Enforcement

Public Service Commission **Case No. GS-13-885**
Northern Excavating Co., Inc. (10-1-13 11:40 a.m.)
Damage Prevention Enforcement

Public Service Commission **Case No. GS-13-886**
Northern Excavating Co., Inc. (10-9-13 17:15 p.m.)
Damage Prevention Enforcement

Public Service Commission **Case No. GS-14-229**
Northern Excavating Co., Inc. (05-06-14 8:57 a.m.)
Damage Prevention Enforcement

Public Service Commission **Case No. GS-14-230**
Northern Excavating Co., Inc. (04-30-14 1:45 p.m.)
Damage Prevention Enforcement

Public Service Commission **Case No. PU-14-671**
Northern Excavating Co., Inc. (5-28-14 3:30 p.m.)
Damage Prevention Enforcement

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

July 29, 2015

Appearances

Commissioners Julie Fedorchak, Randy Christmann, and Brian P. Kalk.

Mitchell Armstrong, Special Assistant Attorney General, 122 East Broadway Avenue, Bismarck, North Dakota 58501, on behalf of the Public Service Commission Advocacy Staff.

Robert Lindberg, President, Northern Excavating Co., Inc. 3420 82nd Avenue Southeast, Jamestown, ND 58402, on behalf of Northern Excavating Co., Inc.

77 PU-14-671 Filed 07/29/2015 Pages: 15
Findings of Fact, Conclusions of Law and Order
Public Service Commission

80 GS-14-230 Filed 07/29/2015 Pages: 15
Findings of Fact, Conclusions of Law and Order
Public Service Commission

80 GS-14-229 Filed 07/29/2015 Pages: 15
Findings of Fact, Conclusions of Law and Order

79 GS-13-886 Filed 07/29/2015 Pages: 15
Findings of Fact, Conclusions of Law and Order

80 GS-13-885 Filed 07/29/2015 Pages: 15
Findings of Fact, Conclusions of Law and Order

79 GS-13-884 Filed 07/29/2015 Pages: 15
Findings of Fact, Conclusions of Law and Order

Casey Furey, formerly counsel with the North Dakota Public Service Commission, as Commission advisory counsel.

Rosellen Sand, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street, Suite 303, Bismarck, North Dakota 58503, as Procedural Hearing Officer.

Preliminary Statement

On November 19, 2013, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (MDU) filed with the Public Service Commission (Commission) three Third Party Damage Complaint forms alleging violations by Northern Excavating Co., Inc. (Northern) of North Dakota Century Code chapter 49-23, One-Call Excavation Notice System (One-Call Law). These forms were docketed as Case No. GS-13-884, Case No. GS-13-885 and Case No. PU-13-886.

On December 5, 2013, Commission Advocacy Staff (Advocacy Staff) sent a letter to Northern enclosing a copy of each of the complaint forms docketed as Case No. GS-13-884, Case No. GS-13-885 and Case No. PU-13-886, and requesting a response.

On January 13, 2014, Robert Lindberg, President, Northern Excavating Co., Inc., filed a letter on behalf of Northern in response to the complaints docketed as Case No. GS-13-884, Case No. GS-13-885 and Case No. PU-13-886.

On May 12, 2014, MDU filed with the Commission two ND One-Call Complaint forms alleging violations by Northern of the One-Call Law. These forms were docketed as Case No. GS-14-229 and Case No. GS-14-230.

On May 16, 2014, Advocacy Staff sent a letter to Northern enclosing a copy of the complaint form docketed as Case No. GS-14-229 and requesting a response.

Also on May 16, 2014, Advocacy Staff sent a letter to Northern enclosing a copy of the complaint form docketed as Case No. GS-14-230 and requesting a response.

On May 29, 2014, Robert Lindberg filed a letter on behalf of Northern in response to the complaint docketed as Case No. GS-14-229.

Also on May 29, 2014, Robert Lindberg filed a letter on behalf of Northern in response to the complaint docketed as Case No. GS-14-230.

On August 5, 2014, MDU filed with the Commission a ND One-Call Complaint form alleging a violation by Northern of the One-Call Law. This form was docketed as PU-14-671.

On August 11, 2014, Advocacy Staff sent a letter to Northern enclosing a copy of the complaint form docketed as Case No. GS-14-671 and requesting a response.

On October 29, 2014, Advocacy Staff filed a formal complaint against Northern, alleging violations of the One-Call Law in Case No. GS-13-884, Case No. GS-13-885 and Case No. PU-13-886, and requesting the Commission find Northern in violation of the One-Call Law and impose a penalty of \$5000 in Case No. GS-13-884, \$5500 in Case No. GS-13-885, and \$5500 in Case No. GS-13-886.

On October 29, 2014, Advocacy Staff filed a formal complaint against Northern, alleging violations of the One-Call Law in Case No. GS-14-229, and requesting the Commission find Northern in violation of the One-Call Law and impose a penalty of \$6500.

On October 29, 2014, Advocacy Staff filed a formal complaint against Northern, alleging violations of the One-Call Law in Case No. GS-14-230, and requesting the Commission find Northern in violation of the One-Call Law and impose a penalty of \$7500.

On October 29, 2014, Advocacy Staff filed a formal complaint against Northern, alleging violations of the One-Call Law in Case No. PU-14-671, and requesting the Commission find Northern in violation of the One-Call Law and impose a penalty of \$7500.

On November 6, 2014, the Commission found each of the formal complaints stated a *prima facie* case and directed the complaints be served on Northern.

On December 17, 2014, the Commission issued a Notice of Consolidated Hearing on the complaint for Case No. GS-13-884, Case No. GS-13-885 and Case No. GS-14-230, scheduling the hearing for February 3, 2015, at 3:00 pm CDT in the Commission Hearing Room, State Capitol, 12th Floor, Bismarck, North Dakota 58505.

On December 17, 2014, the Commission issued a Notice of Consolidated Hearing on the complaints for Case No. GS-13-886, Case No. GS-14-229 and Case No. PU-14-671, scheduling the hearing for February 3, 2015, at 1:00 pm CDT in the Commission Hearing Room, State Capitol, 12th Floor, Bismarck, North Dakota 58505.

On February 3, 2015, with the consent of the parties, the Administrative Law Judge continued the hearing on the captioned six cases.

On April 8, 2015, the Commission issued a Notice of Rescheduled Consolidated Hearing on the formal complaints in Case No. GS-13-884, Case No. GS-13-885 and Case No. GS-14-230, scheduling the hearing for June 30, 2015, at 8:30 am CST in the Commission Hearing Room, State Capitol, 12th Floor, Bismarck, North Dakota 58505.

The Notice of Rescheduled Consolidated Hearing identified the following issues to be considered:

1. Has Northern Excavating Co., Inc. violated North Dakota Century Code Chapter 49-23, the North Dakota One-Call Law in Case No. GS-13-884, Case No. GS-13-885, and/or Case No. GS-14-230?
2. If a violation is found, should the Commission impose a civil penalty as requested in the complaint in the following amounts for each respective case: \$5000 in Case No. GS-13-884, \$5500 in Case No. GS-13-885, and \$7500 in Case No. GS-14-230?

On April 8, 2015, the Commission issued a Notice of Rescheduled Consolidated Hearing on the formal complaints in Case No. GS-13-886, Case No. GS-14-229 and Case No. PU-14-671, scheduling the hearing for June 30, 2015, at 8:30 am CST, following the commencement of consolidated cases GS-13-884, GS-13-885, and GS-14-230 located in the Commission Hearing Room, State Capitol, 12th Floor, Bismarck, North Dakota 58505.

The Notice of Rescheduled Consolidated Hearing identified the following issues to be considered:

1. Has Northern Excavating Co., Inc. violated North Dakota Century Code Chapter 49-23, the North Dakota One-Call Law in Case No. GS-13-886, Case No. GS-14-229, and/or Case No. PU-14-671?
2. If a violation is found, should the Commission impose a civil penalty as requested in the complaint in the following amounts for each respective case: \$5500 in Case No. GS-13-886, \$6500 in Case No. GS-14-229, and \$7500 in Case No. PU-14-671?

On June 30, 2015, by agreement of the parties, all six cases were consolidated into one hearing. The public hearing was held on June 30, 2015.

Having allowed all interested persons an opportunity to be heard and having heard, reviewed, and considered all testimony and evidence presented, the Commission makes the following:

Findings of Fact

1. Northern Excavating Co., Inc. is a North Dakota corporation with offices located at 3420 82nd Avenue Southeast, Jamestown, ND 58402-1108.
2. Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. is a foreign corporation with offices located at 400 North 4th Street, Bismarck, ND 58501-4022.

GS-13-884

3. On August 15, 2013, Northern provided an excavation notice to the North Dakota One-Call (NDOC) Notification Center for work to begin on August 19, 2013. The NDOC Notification Center assigned locate ticket number 13132425 to this excavation notice. Under North Dakota Century Code section 49-23-04(3)(g), the expiration date for the locate ticket was September 9, 2013.
4. On September 13, 2013, Northern began an excavation as defined under North Dakota Century Code section 49-23-01(7) at Main and Railroad Avenue in Ross, ND.
5. On September 13, 2013, a natural gas service line at Main and Railroad Avenue in Ross, ND, was damaged during the excavation performed by Northern.
6. Dana Baxter, Working Gas Lead for MDU, testified that he was not able to be on site that day, but was given the information from his employee who was onsite to repair the damaged line.
7. Paul Riely, District Gas Superintendent for MDU, testified that the cost to repair the damage to the service line is \$743.38. As of the date of the hearing, Northern had not reimbursed MDU for the damage.
8. Robert Lindberg testified that Northern had a valid One-Call ticket, and that the locate markings were 33 inches away from where the line hit occurred. The ticket number provided, 13132425, was expired on the date of the damage. Mr. Lindberg further testified that he did not know the length of time a One-Call ticket is valid.
9. Northern did not deny damaging MDU's facilities.
10. It is the excavator's responsibility to "provide an excavation or locate notice at least forty-eight hours before beginning any excavation." NDCC § 49-23-04. The locate ticket was expired as the excavation occurred more than 21 days after the location request. Northern requested an updated ticket approximately 45 minutes following the damage to the facility.
11. Commission Advocacy Staff Victor Schock testified that, of the proposed \$5,000 civil penalty, \$500 was included as penalty for not having a valid locate ticket for the area before beginning its excavation on September 13, 2013, \$500 was included as penalty because the incident involved damage to a natural gas line, and \$4,000 was included as penalty for finding an eighth violation of the One-Call Law by the same company.

12. 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 West in Ross, ND.

13. On October 15, 2013, a 3" gas main and a 2" gas main at Railroad Avenue and 3rd Street West, both operated by MDU, were damaged during the excavation performed by Northern.

14. Leamon Ferrell, Working Lead Foreman for MDU, testified that when he arrived at the site on October 15, 2013 he was told by Kyle, a foreman for Northern, that Northern did not have a locate ticket. Mr. Ferrell also testified that the lines were not cut all the way through, but were still blowing gas. The lines were 1.5 to 2 feet away from one another.

15. Paul Riely testified that the cost to repair the 2" gas main is \$1044.21 and the cost to repair the 3" gas mains is \$1183.64. As of the date of the hearing, Northern had not reimbursed MDU for the damage.

16. Robert Lindberg testified Northern began the excavation without a One-Call ticket because they needed to fix a temporary water line that had broken. He felt that the circumstances around this created an emergency. Mr. Lindberg further testified that the damage was a result of Northern's excavation, but they had to get the water line fixed.

17. Northern's letter in response to the Third Party Damage Complaint form, received by the Commission on January 13, 2014, makes no mention of an emergency situation at Railroad Avenue and 3rd Street West.

18. North Dakota Century Code section 49-23-01(5) defines emergency as a sudden, unexpected occurrence, involving a clear and imminent danger, and demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.

19. The Commission finds that a broken temporary water line serving an elevator does not constitute an emergency as defined by North Dakota Century Code section 49-23-01(5). Further, if Northern had determined that an emergency as defined by North Dakota Century Code section 49-23-01(5) did exist, Northern would have indicated that it followed the requirements of North Dakota Century Code § 49-23-04(4) that requires certain steps be taken in an emergency including reasonable precautions to protect underground facilities and giving notification as soon as practical that an emergency exists.

20. It is the excavator's responsibility to "provide an excavation or locate notice at least forty-eight hours before beginning any excavation." NDCC § 49-23-04. Northern admitted it did not have a ticket.

21. Robert Lindberg agreed that Northern damaged MDU's facilities.

22. Victor Schock testified that, of the proposed \$5,500 civil penalty, \$500 was included as penalty for not having a valid locate ticket for the area before beginning its excavation on October 15, 2013, \$500 was included as penalty because the incident involved damage to a natural gas line, and \$4,500 was included as penalty for finding a ninth violation of the One-Call Law by the same company.

GS-13-886

23. On September 26, 2013, Northern provided an excavation notice to the NDOC Notification Center for excavation by Northern, scheduled to begin on September 30, 2013. The NDOC Notification Center assigned locate ticket number 13167425 to this excavation notice.

24. On October 9, 2013, Northern began an excavation as defined under North Dakota Century Code section 49-23-01(7) at Central Avenue in Ross, ND.

25. On October 9, 2013, a distribution service line at Central Avenue, operated by MDU, was damaged during the excavation performed by Northern.

26. Leamon Ferrell testified that when he arrived on site on October 9, 2013 he could see both locate flags and yellow paint in the area of the damage. He also testified that the line was bent over so that it was no longer blowing gas, and Northern continued their work in the area of the damage. He was told by Northern personnel on site that the operator was Shannon Severson.

27. Paul Riely testified that the cost to repair the damage to the service line is \$341.74. As of the date of the hearing, Northern had not reimbursed MDU for the damage.

28. Robert Lindberg testified that Shannon Severson does not operate equipment for Northern, but rather is a laborer. Mr. Lindberg further testified that Shannon pierced the line with a roughly 3/8-inch diameter probe. Northern then dug up the line with a track hoe so they could bend over the line to stop the flow of gas.

29. The underground facilities were properly marked.

30. Northern did not deny damaging MDU's facilities during its excavation activities.

31. Victor Schock testified that, of the proposed \$5,500 civil penalty, \$500 was included for not acting in a careful and prudent manner when conducting the excavation on October 9, 2013 and \$5,000 was included as penalty for finding a tenth violation of the One-Call Law by the same company.

GS-14-229

32. On May 1, 2014, Northern provided an excavation notice to the NDOC Notification Center for excavation by Northern, scheduled to begin on May 5, 2014. The NDOC Notification Center assigned locate ticket number 14038256 to this excavation notice.

33. On May 6, 2014, Northern began an excavation as defined under North Dakota Century Code section 49-23-01(7) at 309 feet east of 2nd street east on Central Avenue in Ross, ND.

34. On May 6, 2014, a one inch natural gas distribution main line at 309 feet east of 2nd street east on Central Avenue, operated by MDU, was damaged during the excavation performed by Northern.

35. Dana Baxter testified that whisker biscuits were visible in line with the damaged gas line. He further testified that in his opinion the line was marked properly, but the marks were not properly maintained by Northern.

36. Paul Riely testified that the cost to repair the damage to the gas main line is \$1168.85. As of the date of the hearing, Northern had not reimbursed MDU for the damage.

37. Robert Lindberg testified Northern requested more locate flags in the area from ELM, but ELM refused to do so. Mr. Lindberg further testified that the spacing between the whisker biscuits was too far (in excess of 50 feet).

38. The underground facilities were properly marked.

39. Northern did not deny damaging MDU's facilities during its excavation activities.

40. Victor Schock testified that, of the proposed \$6,500 civil penalty, \$500 was included for not acting in a careful and prudent manner when conducting the excavation on May 6, 2014 and \$6,000 was included as penalty for finding a twelfth violation of the One-Call Law by the same company.

GS-14-230

41. On April 21, 2014, Northern provided an excavation notice to the NDOC Notification Center for excavation by Northern, scheduled to begin on April 23, 2014. The NDOC Notification Center assigned locate ticket number 14030557 to this excavation notice.

42. On April 30, 2014, Northern began an excavation as defined under North Dakota Century Code section 49-23-01(7) east of 2nd Street on Central Avenue in Ross, ND.

43. On April 30, 2014, a natural gas distribution line at 196 feet east of 2nd street east on Central Avenue, operated by MDU, was damaged during the excavation performed by Northern.

44. Dana Baxter testified that the damage caused was outside of the area covered by the One-Call ticket provided.

45. Paul Riely testified that the cost to repair the damage to the service line is \$1065.22. As of the date of the hearing, Northern had not reimbursed MDU for the damage.

46. Robert Lindberg testified Northern's ticket number 14030557 was valid, and that the ticket did cover the area they were excavating. He acknowledged that the location listed on the ticket does not match the area in which Northern was excavating. He testified that he believed there was a miscommunication between the One-Call center and the locator.

47. Northern's excavation was outside the area of any valid locate ticket. The location of the damaged facility was outside the area indicated to be excavated in the locate ticket relied upon by Northern.

48. Northern did not deny damaging MDU's facilities.

49. Victor Schock testified that, of the proposed \$7,500 civil penalty, \$500 was included as penalty for not having a valid locate ticket for the area before beginning its excavation on April 30, 2014, \$500 was included as penalty because the incident involved damage to a natural gas line, and \$6,500 was included as penalty for finding a thirteenth violation of the One-Call Law by the same company.

PU-14-671

50. On May 13, 2014, Northern provided an excavation notice to the NDOC Notification Center for excavation by Northern, scheduled to begin on May 15, 2014. The NDOC Notification Center assigned locate ticket number 14048562 to this excavation notice.

51. The underground facilities were properly marked.

52. On May 28, 2014, Northern began an excavation as defined under North Dakota Century Code section 49-23-01(7) at 700 feet northwest of 3500 Apple Creek Road near Bismarck, ND.

53. An underground three-phase primary cable, operated by MDU, was damaged at 700 feet northwest of 3500 Apple Creek Road.

54. Robert Lindberg testified Northern took pictures of the lines two minutes after excavating four feet away from the lines and the trench wall collapsed allowing the lines to fall into their trench. Mr. Lindberg further testified there was no damage on the lines at the time he took the pictures and that he called MDU to notify them that their lines were exposed but not damaged.

55. Northern contends that the facility may have been damaged as a result of another excavator's activity. Northern could not identify another excavator at the site on May 28, 2014, but identified another excavator that had been at the site approximately 2 days prior to May 28, 2014.

56. Northern did not contend the facilities were improperly marked.

57. Cordell Wiest, Electric Construction Supervisor for MDU, testified that the damage to the underground facility at the site must have occurred on May 28, 2014 because the exposed copper wire showed no signs of corrosion and, considering the amount of damage to the line, the line would have experienced an outage within a few hours of the damage. Mr. Wiest also testified that Northern's track hoe was sitting at the excavation site and was the only piece of equipment in the area capable of causing the damage.

58. The evidence indicates the facility was damaged by Northern's excavation activity due to the nature of the damage (lack of corrosion), the likelihood the facility would not have performed in the condition it was in, and the excavation activities described by Northern at the hearing.

59. No MDU customers experienced an electric outage as a result of this incident.

60. Craig Lohstreter, Electric Superintendent for MDU, testified that the cost to repair the damage to the cable is \$2039.41. As of the date of the hearing, Northern had not reimbursed MDU for the damage.

61. Victor Schock testified that, of the proposed \$7,500 civil penalty, \$500 was included as penalty because the incident involved damage to a large 3-phase electric distribution line, and \$7,000 was included as penalty for finding a fourteenth violation of the One-Call Law by the same company.

All Cases

62. This proceeding consolidated for hearing six Advocacy Staff complaints regarding violations of the One-Call Law by Northern. In previous Case No. PU-13-877, Case No. PU-13-878, Case No. PU-13-879, Case No. PU-13-880, Case No. PU-13-881, Case No. PU-13-882, Case No. PU-13-883, and Case No. PU-14-134, the Commission found Northern violated the One-Call Law by not excavating in a careful and prudent manner. Consequently, in the instant six proceedings, the Commission believes it is appropriate to impose penalties that reflect multiple violations of the One-

Call law by the same company, but not the full amount of the civil penalties recommended by Advocacy Staff for multiple violations. The Commission determined it should impose an additional \$1000 penalty in each of the cases to recognize multiple violations of the One-Call Law.

Conclusions of Law

1. The Commission has jurisdiction over this proceeding.

GS-13-884

2. The September 13, 2013 activity by Northern was an excavation under North Dakota Century Code chapter 49-23.
3. Northern did not have a valid locate for the area before beginning its excavation on September 13, 2013, and the excavation resulted in damage to an underground facility. Consequently, Northern violated North Dakota Century Code chapter 49-23 and a \$500 penalty should be imposed.
4. Northern's September 13, 2013 excavation damaged a natural gas service line at Main and Railroad Avenue in Ross, ND. An additional \$500 penalty should be imposed in recognition of the nature, circumstances and severity of the incident.
5. An additional \$1000 penalty should be imposed to recognize previous and multiple violations of the One-Call Law.
6. The total amount of penalty should be \$2000 in Case No. GS-13-884.

GS-13-885

7. The October 15, 2013 activity by Northern was an excavation under North Dakota Century Code chapter 49-23.
8. Northern did not have a valid locate for the area before beginning its excavation on October 15, 2013, and the excavation resulted in damage to an underground facility. Consequently, Northern violated North Dakota Century Code chapter 49-23 and a \$500 penalty should be imposed.
9. Northern's October 15, 2013 excavation damaged the three-inch natural gas main and two-inch natural gas main at Railroad Avenue and 3rd Street West in Ross, ND. An additional \$500 penalty should be imposed in recognition of the nature, circumstances and severity of the incident.
10. An additional \$1000 penalty should be imposed to recognize previous and multiple violations of the One-Call Law.

11. The total amount of penalty should be \$2000 in Case No. GS-13-885.

GS-13-886

12. The October 9, 2013 activity by Northern was an excavation under North Dakota Century Code chapter 49-23.

13. Northern did not act in a careful and prudent manner when conducting the excavation on October 9, 2013, and the excavation resulted in damage to an underground natural gas service line at Central Avenue in Ross, ND. Consequently, Northern violated North Dakota Century Code chapter 49-23 and a \$500 penalty should be imposed in recognition of the nature, circumstances and severity of the incident.

14. An additional \$1000 penalty should be imposed to recognize previous and multiple violations of the One-Call Law.

15. The total amount of penalty should be \$1500 in Case No. GS-13-886.

GS-14-229

16. The May 6, 2014 activity by Northern was an excavation under North Dakota Century Code chapter 49-23.

17. Northern did not act in a careful and prudent manner when conducting the excavation on May 6, 2014, and the excavation resulted in damage to an underground one-inch natural gas main line at 309 feet east of 2nd street east on Central Avenue in Ross, ND. Consequently, Northern violated North Dakota Century Code chapter 49-23 and a \$500 penalty should be imposed in recognition of the nature, circumstances and severity of the incident.

18. An additional \$1000 penalty should be imposed to recognize previous and multiple violations of the One-Call Law.

19. The total amount of penalty should be \$1500 in Case No. GS-14-229.

GS-14-230

20. The April 30, 2014 activity by Northern was an excavation under North Dakota Century Code chapter 49-23.

21. Northern did not have a valid locate for the area before beginning its excavation on April 30, 2014, and the excavation resulted in damage to an underground facility. Consequently, Northern violated North Dakota Century Code chapter 49-23 and a \$500 penalty should be imposed.

22. Northern's April 30, 2014 damaged a natural gas distribution line at 196 feet east of 2nd street east on Central Avenue in Ross, ND. An additional \$500 penalty should be imposed in recognition of the nature, circumstances and severity of the incident.

23. An additional \$1000 penalty should be imposed to recognize previous and multiple violations of the One-Call Law.

24. The total amount of penalty should be \$2000 in Case No. GS-14-229.

PU-14-671

25. The May 28, 2014 activity by Northern was an excavation under North Dakota Century Code chapter 49-23.

26. Northern did not act in a careful and prudent manner when conducting the excavation on April 30, 2014, and the excavation resulted in damage to an underground facility. Consequently, Northern violated North Dakota Century Code chapter 49-23.

27. Northern's May 28, 2014 excavation damaged a three-phase primary cable at 700 feet northwest of 3500 Apple Creek Road near Bismarck, ND. The incident did not result in a loss of electric service to MDU customers.

28. A \$1000 penalty should be imposed to recognize previous and multiple violations of the One-Call Law.

29. The total amount of penalty should be \$1000 in Case No. PU-14-671.

GS-13-884, GS-13-885 and GS-14-230

30. The evidence demonstrates the facilities were not marked because Northern did not have valid locate tickets for the location of the damage at the time of the damage for cases GS-13-884, GS-13-885 and GS-14-230. It is the excavator's responsibility to comply with North Dakota Century Code section 49-23-04.

GS-13-886, GS-14-229 and PU-14-671

31. The evidence demonstrates that for cases GS-13-886, GS-14-229 and PU-14-671 the underground facilities were properly marked but damaged by Northern's track hoe during excavation activities. It is the excavator's responsibility to conduct the excavation in a careful and prudent manner, which means "excavating within twenty-four inches of the outer edges of an underground facility located manually and marked by the owner or operator by stakes, pain, or other customary manner, and supporting and protecting the uncovered facility." North Dakota Century Code section 49-23-01(3).

32. In addition, North Dakota Century Code section 49-23-05 requires an excavator to:

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.
2. Provides support in a manner approved by the operator for underground facilities in and near the construction area, including backfill operations to protect the facilities.

....

6. Properly manage spoil material to prevent shifting or falling material that could damage belowground facilities.

33. North Dakota Century Code section 49-23-06(2)(a) provides.

If an excavator fails to comply with this chapter or damages an underground facility, the excavator is liable for all damages caused by the failure to comply with this chapter and for all damages to the facilities and must reimburse the operator for the cost of repair and restoration, loss of product, and interruption of service occurring because of the damage or injury to the facilities, together with reasonable costs and expenses of suit, including reasonable attorney's fees.

34. Northern must reimburse MDU for the costs identified under North Dakota Century Code section 49-23-06(2)(a): "repair and restoration, loss of product, and interruption of service occurring because of the damage or injury to the facilities, together with reasonable costs and expenses of suit, including reasonable attorney's fees."

From the foregoing Findings of Fact and Conclusions of Law, the Commission now makes its:

Order


The Commission orders:

1. In Case No. GS-13-884, Case No. GS-13-885, Case No. GS-13-886, Case No. GS-14-229, Case No. GS-14-230, and Case No. PU-14-671, Northern violated North Dakota Century Code chapter 49-23, the North Dakota One-Call law.
2. Northern shall pay a total fine of \$10,000 made up of the following:
 - a. \$2000 in Case No. GS-13-884;
 - b. \$2000 in Case No. GS-13-885;

- c. \$1500 in Case No. GS-13-886;
- d. \$1500 in Case No. GS-14-229;
- e. \$2000 in Case No. GS-14-230; and
- f. \$1000 in Case No. PU-14-671.

3. The total \$10,000 fine is payable to the North Dakota Public Service Commission within ten business days of the service of this Order.

PUBLIC SERVICE COMMISSION

		
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Randy Christmann Commissioner	Julie Fedorchak Chairman	Brian Kalk Commissioner