



Public Service Commission
State of North Dakota

COMMISSIONERS

Brian P. Kalk
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15 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. (4-fiber 2nd time)
Damage Prevention Enforcement
PU-14-134

Public Service Commission v.
Northern Excavating Co., Inc. (05-06-14 8:57 a.m.)
Damage Prevention Enforcement
GS-14-229

Public Service Commission v.
Northern Excavating Co., Inc. (04-30-14 1:45 p.m.)
Damage Prevention Enforcement
GS-14-230

Public Service Commission v.
Northern Excavating Co., Inc. (5-28-14 3:30 p.m.)
Damage Prevention Enforcement
PU-14-671

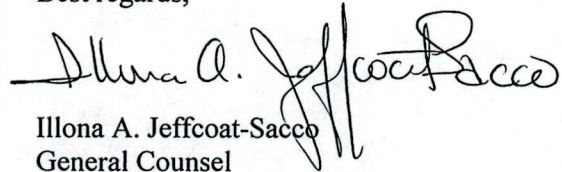
Dear Mr. Mann:

Enclosed are four requests for an Administrative Law Judge in the captioned four cases. Hearings have been tentatively scheduled for 3 February 2015. When a Notice or Notices are 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
Mitch Armstrong

- 11 GS-14-230 Filed 12/15/2014 Pages: 26
Request for Administrative Law Judge
Public Service Commission
- 11 GS-14-229 Filed 12/15/2014 Pages: 26
Request for Administrative Law Judge
Public Service Commission
- 9 PU-14-134 Filed 12/15/2014 Pages: 26
Request for Administrative Law Judge
Public Service Commission



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 P0 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. PU-14-134 - A hearing has been tentatively scheduled for 3 February 2015. When a Notice of Hearing is issued we will forward it to your office.
--

(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, General Counsel	Date 12/15/2014
Signature of Requesting Person <i>x Illona A. Jeffcoat-Sacco</i>	Telephone Number (701) 328-2407

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Northern Excavating Co., Inc.
Damage Prevention Enforcement

Case No. PU-14-134

Public Service Commission,)	
Complainant,)	
)	
vs.)	
)	Complaint
Northern Excavating Co., Inc.)	
Respondent.)	

The North Dakota Public Service Commission Advocacy Staff ("Staff"), for its complaint against Northern Excavating Co., Inc., alleges and shows the following:

I.

Northern Excavating Co., Inc., ("Northern") is a North Dakota corporation with offices located at 3420 82nd Avenue SE, Jamestown, ND 58402-1108.

II.

Reservation Telephone Cooperative ("RTC") is a North Dakota cooperative association with offices located at 24 N Main Street, Parshall, ND 58770.

III.

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 March 20, 2014, the Commission received a ND One-Call Complaint form from Shane Hart, Assistant General Manager for RTC. The complaint alleges violations by Northern of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

V.

In a letter to Northern dated March 21, 2014, ("request letter"), staff provided a copy of the complaint form and requested a written response concerning the complaint by April 4, 2014, attached as Exhibit 1.

VI.

On March 30, 2014, the Commission received supplementary information from Shane Hart ("supplementary information") concerning the complaint, attached as Exhibit 2.

VII.

On April 2, 2014, the Commission received a response letter from Northern ("response letter"), attached as Exhibit 3.

VIII.

In its complaint, RTC alleges that on August 2, 2013, Northern began an excavation as defined in North Dakota Century Code section 49-23-01(7) at 2nd Street and Central Avenue in the City of Ross, North Dakota ("Ross"). As a result of this excavation, RTC alleges that a 4-fiber and a 2-fiber drop was damaged. RTC further alleges that the facilities were properly marked prior to excavation and the cost to repair the damage was \$1,522.51. The date of excavation was revised to August 22, 2013, in the supplementary information.

IX.

According to information provided by RTC during a staff investigation of the complaint, RTC has not been reimbursed for damages, the incident affected two parties, the damage occurred as a result of being cut by a trackhoe, no critical facilities such as hospitals or clinics were affected by the incidents. RTC further indicated that they are not aware of any other contractors working in the area of the complaint at the time of the incident. This is the eleventh complaint filed by staff against Northern.

X.

Northern provided an excavation notice to the North Dakota One Call Notification Center (NDOC) on August 15, 2013, with work to begin in the area cited in the complaint to begin on August 19, 2013. The NDOC assigned locate ticket number 13132439 to the excavation notice, which indicates the work was being performed as part of a water mainline installation project in Ross.

XI.

In its response letter, Northern claims that they were not working in the location of the complaint at the time of the incident and do not take responsibility for the damages to RTC facilities.

XII.

In a letter to Northern dated August 21, 2014, ("updated request letter"), staff provided a copy of the complaint form along with the updated incident date and requested a written response by September 4, 2014 concerning the complaint, attached as Exhibit 4. As of October 1, 2014, the Commission had not received a response from Northern.

XII.

Northern violated North Dakota Century Code section 49-23-05 by failing to conduct the excavation in a careful and prudent manner.

XIV.

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

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 chapters 49-22 and 49-23, 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.

XV.

The North Dakota Public Service Commission Damage Prevention Plan provides:

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.

IX.

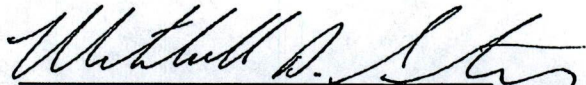
The Respondent must serve an answer to a complaint upon the Complainant and the Commission within twenty days after service of the complaint, or the Commission may deem the complaint to be admitted. Answers must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure.

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 failing to conduct an excavation in a careful and prudent manner as outlined in North Dakota Century Code section 49-23-05.
2. That the Commission impose a civil penalty in the amount of \$5500.
3. 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



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-14-229 - A hearing has been tentatively scheduled for 3 February 2015. When a Notice of Hearing is issued we will forward it to your office.
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(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, General Counsel	Date 12/15/2014
Signature of Requesting Person X	Telephone Number (701) 328-2407

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Northern Excavating Co., Inc. (05-06-14 8:57 a.m.)
Damage Prevention Enforcement

Case No. GS-14-229

Public Service Commission,)	
Complainant,)	
)	
vs.)	
)	
Northern Excavating Co., Inc.)	Complaint
Respondent.)	

The North Dakota Public Service Commission Advocacy Staff ("Staff"), for its complaint against Northern Excavating Co., Inc., alleges and shows the following:

I.

Northern Excavating Co., Inc., ("Northern") is a North Dakota corporation with offices located at 3420 82nd Avenue SE, Jamestown, ND 58402-1108.

II.

Montana-Dakota Utilities Co. (MDU) is a North Dakota business corporation with principal offices at 400 N 4th Street, Bismarck, ND 58501.

III.

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 May 12, 2014, the Commission received a ND One-Call Complaint form from Paul Riely, District Gas Superintendent for MDU, attached as Exhibit 1. The complaint alleges a violation by Northern of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System. This is the twelfth complaint filed by staff against Northern.

V.

In a letter to Northern dated May 16, 2014, (“request letter”), staff provided a copy of the complaint form and requested a written response concerning the complaint by May 30, 2014.

VI.

On May 29, 2014, the Commission received a response letter from Northern (“response letter”), attached as Exhibit 2.

VII.

In its complaint, MDU alleges that on May 6, 2014, Northern began an excavation as defined in North Dakota Century Code section 49-23-01(7) at 309 feet East of 2nd Street East on Central Avenue in the City of Ross, North Dakota (“Ross”). As a result of this excavation, MDU alleges that a 1 inch natural gas distribution main

was damaged. MDU further alleges that the facilities were properly marked prior to excavation and the cost to repair the damage was \$1,168.85.

VIII.

According to information provided by MDU during a staff investigation of the complaint, MDU has not been reimbursed for damages, the incident affected two commercial parties for two hours, the damage occurred as a result of being cut by a trackhoe, and no critical facilities such as hospitals or clinics were affected by the incidents.

IX.

Northern provided an excavation notice to the North Dakota One Call Notification Center (NDOC) on May 1, 2014, with work to begin in the area cited in the complaint to begin on May 5, 2014. The NDOC assigned locate ticket number 14038256 to the excavation notice, attached as Exhibit 3, which indicates the work was being performed as part of a water mainline installation project in Ross.

X.

In its response letter, Northern claims that the area in question was not marked properly, and does not take responsibility for the damages to MDU facilities.

XI.

Northern violated North Dakota Century Code section 49-23-05 by failing to conduct the excavation in a careful and prudent manner.

XII.

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.

XIII.

The North Dakota Public Service Commission Damage Prevention Plan provides:

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.

XIV.

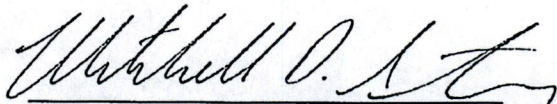
The Respondent must serve an answer to a complaint upon the Complainant and the Commission within twenty days after service of the complaint, or the Commission may deem the complaint to be admitted. Answers must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure.

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 conduct an excavation in a careful and prudent manner as outlined in North Dakota Century Code section 49-23-05.
2. That the Commission impose a civil penalty in the amount of \$6,500.
3. 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



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.
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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
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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-14-230 - A hearing has been tentatively scheduled for 3 February 2015. When a Notice of Hearing is issued we will forward it to your office.
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(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, General Counsel	Date 12/15/2014
Signature of Requesting Person X	Telephone Number (701) 328-2407

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Northern Excavating Co., Inc. (04-30-14 1:45 p.m.)
Damage Prevention Enforcement**

Case No. GS-14-230

Public Service Commission,)	
Complainant,)	
)	
vs.)	
)	
Northern Excavating Co., Inc.)	Complaint
Respondent.)	

The North Dakota Public Service Commission Advocacy Staff ("Staff"), for its complaint against Northern Excavating Co., Inc., alleges and shows the following:

I.

Northern Excavating Co., Inc., ("Northern") is a North Dakota corporation with offices located at 3420 82nd Avenue SE, Jamestown, ND 58402-1108.

II.

Montana-Dakota Utilities Co. (MDU) is a North Dakota business corporation with principal offices at 400 N 4th Street, Bismarck, ND 58501.

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.

IV.

On May 12, 2014, the Commission received a ND One-Call Complaint form from Paul Riely, District Gas Superintendent for MDU, attached as Exhibit 1. The complaint alleges a violation by Northern of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System. This is the thirteenth complaint filed by staff against Northern.

V.

In a letter to Northern dated May 16, 2014, ("request letter"), staff provided a copy of the complaint form and requested a written response concerning the complaint by May 30, 2014.

VI.

On May 29, 2014, the Commission received a response letter from Northern ("response letter"), attached as Exhibit 2.

VII.

In its complaint, MDU alleges that on April 30, 2014, Northern began an excavation as defined in North Dakota Century Code section 49-23-01(7) at 196 feet East of 2nd Street East on Central Avenue in the City of Ross, North Dakota ("Ross"). As a result of this excavation, MDU alleges that a natural gas distribution line was damaged. MDU further alleges that Northern was digging outside of the "Extent of Work" area defined in the One-Call notice and the cost to repair the damage was \$1,168.85.

VIII.

According to information provided by MDU during a staff investigation of the complaint, MDU has not been reimbursed for damages, the incident affected two commercial parties, the damage occurred as a result of being cut by a trackhoe, and no critical facilities such as hospitals or clinics were affected by the incidents.

IX.

Northern provided an excavation notice to the North Dakota One Call Notification Center (NDOC) on April 21, 2014, with work to begin in an area adjacent to the area cited in the complaint to begin on April 23, 2014. The NDOC assigned locate ticket number 14030557 to the excavation notice, attached as Exhibit 3, which indicates the work was being performed as part of a water mainline installation project in Ross.

X.

In its response letter, Northern claims that the area in question was not marked properly, and they do not take responsibility for the damages to MDU facilities.

XI.

Northern violated North Dakota Century Code section 49-23-04(1) by failing to provide an excavation notice to the NDOC Notification Center at least forty-eight hours before beginning its excavation.

XII.

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.

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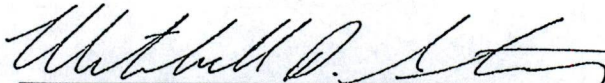
The Respondent must serve an answer to a complaint upon the Complainant and the Commission within twenty days after service of the complaint, or the Commission may deem the complaint to be admitted. Answers must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure.

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 provide an excavation notice to the NDOC Notification Center at least forty-eight hours before beginning its excavation as outlined in North Dakota Century Code section 49-23-04(1).
2. That the Commission impose a civil penalty in the amount of \$7,500.
3. 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



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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
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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. PU-14-671 - A hearing has been tentatively scheduled for 3 February 2015. When a Notice of Hearing is issued we will forward it to your office.
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(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, General Counsel	Date 12/15/2014
Signature of Requesting Person X	Telephone Number (701) 328-2407

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Northern Excavating Co., Inc. (5-28-14 3:30 pm)
Damage Prevention Enforcement**

Case No. PU-14-671

Public Service Commission,)	
Complainant,)	
)	
vs.)	
)	
Northern Excavating Co., Inc.)	Complaint
Respondent.)	

The North Dakota Public Service Commission Advocacy Staff ("Staff"), for its complaint against Northern Excavating Co., Inc., alleges and shows the following:

I.

Northern Excavating Co., Inc., ("Northern") is a North Dakota corporation with offices located at 3420 82nd Avenue SE, Jamestown, ND 58402-1108.

II.

Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. ("MDU") is a North Dakota corporation with offices located at 909 Airport Road, Bismarck, ND 58504.

III.

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 August 5, 2014, the Commission received a ND One-Call Complaint form from Craig Lohstreter of MDU. The complaint alleges a violation by Northern of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

V.

In a letter to Northern dated August 11, 2014, ("request letter"), staff provided a copy of the complaint form and requested a written response by August 25, 2014 concerning the complaint, attached as Exhibit 1. As of October 1, 2014, the Commission has not received a response from Northern.

VI.

In its complaint, MDU alleges that on May 28, 2014 at 3:30pm, Northern began an excavation as defined in North Dakota Century Code section 49-23-01(7) at approximately 700 feet northwest of 3500 Apple Creek Road, Bismarck, ND. As a result of this excavation, MDU alleges that a three-phase primary cable was damaged. MDU further alleges in its complaint that the facilities were properly marked prior to excavation and the cost to repair the damage was \$1,950.

According to information provided by MDU during a staff investigation of the complaint, the incident affected seven commercial parties, the damage occurred as a result of being cut by a backhoe, no critical facilities such as hospitals or clinics were affected by the incidents. This is the fourteenth complaint filed by staff against Northern.

VII.

Northern provided an excavation notice to the North Dakota One Call Notification Center (NDOC) on May 13, 2014, with work to begin in the area cited in the complaint to begin on May 15, 2014. The NDOC assigned locate ticket number 14048562 to the excavation notice, which indicates the work was being performed as part of a Sanitary Sewer and Water Lateral project for the City of Bismarck, attached as Exhibit 2.

VIII.

Northern violated North Dakota Century Code section 49-23-05 by failing to conduct the excavation in a careful and prudent manner.

IX.

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

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 chapters 49-22 and 49-23, 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.

X.

The North Dakota Public Service Commission Damage Prevention Plan provides:

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.

XI.

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.

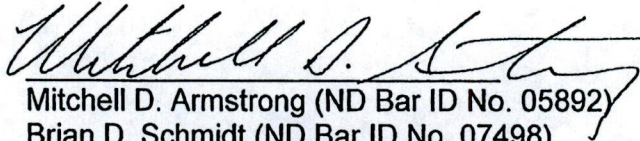
Prayer for Relief

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 49-23-01 and 49-23-05.
2. That the Commission impose a civil penalty in the amount of \$7,500 in Case No. PU-14-671.

3. 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

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P.O. Box 460

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Attorneys for Advocacy Staff