

**STATE OF NORTH DAKOTA**

**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Molstad Excavating, Inc.  
Damage Prevention Enforcement**

**Case No. PU-14-499**

**CONSENT ORDER**

**DATED this 6<sup>th</sup> day of November 2014**

The North Dakota Public Service Commission (Commission) finds:

Molstad Excavating, Inc. (Molstad) is a North Dakota corporation with offices located at 1575 N 73rd St, Grand Forks, ND 58208-3601.

On June 30, 2014, the Commission received a ND One-Call Complaint from Nodak Electric Cooperative, Inc. (Nodak). The complaint alleged a violation by Molstad of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

Commission Advocacy Staff (Staff) conducted an investigation including communication with Molstad, Nodak, and North Dakota One Call (NDOC).

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 28-32-22 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 49-07-01.1 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 Administrative Code section 69-02-04-05 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.

### **Investigation Summary**

Based on its investigation, Staff determined that on June 2, 2014, Molstad personnel provided an excavation notice to the NDOC Notification Center for work to begin on June 4, 2014. The NDOC Notification Center assigned locate ticket number 14066948 to the excavation notice. Under North Dakota Century Code section 49-23-04(3)(g), the expiration date for the locate ticket is June 25, 2014. On June 9, 2014 Molstad provided a relocate notice to the NDOC Notification Center for work to begin on June 11, 2014. The NDOC Notification Center assigned locate ticket number 14074405 to the relocate notice.

Based on its investigation, Staff concluded that on June 10, 2014, Molstad personnel began an excavation as defined under North Dakota Century Code section 49-23-01(7) while performing sanitary water and sewer installation in Grand Forks, North Dakota.

Based on its investigation, Staff concluded that a 4/0 3-phase primary URD cable was damaged during this excavation and that the amount of damage was approximately \$2649.30. The operator has not been reimbursed for damages. 1000 customers lost

service for approximately 1.5 hours, and no critical facilities such as hospitals or clinics were affected by the incident.

Based on its investigation, Staff concluded that there was no agreement between Molstad and Nodak under North Dakota Century Code section 49-23-04(1) prior to excavation that would relieve Molstad of its obligation to provide excavation notice at least forty-eight hours before the excavation.

Based on its investigation, Staff concluded that the excavation was not being made in a time of emergency under North Dakota Century Code section 49-23-04(4), allowing the excavator to give notification after the start of the excavation.

Based on its investigation, Staff concluded that Molstad 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.

### **Concurrences**

Molstad and the Commission have agreed to resolve this matter without further administrative proceedings.

In the attached Consent to Entry of Order, Molstad expressly waives its rights to a hearing in this matter, to consult an attorney, to present argument to the Commission, and to appeal from any adverse determination after a hearing.

Molstad will reimburse Nodak for the costs they identify 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".

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

The Commission issues the following:

### **Order**

The Commission orders Molstad to pay a fine of \$2500 payable to the North Dakota Public Service Commission within ten business days of the effective date of this Order.

PUBLIC SERVICE COMMISSION

*Randy Christmann*

Randy Christmann  
Commissioner

*B. Kalk*

Brian Kalk  
Chairman

*Julie Fedorchak*

Julie Fedorchak  
Commissioner

CONSENT TO ENTRY OF ORDER

The undersigned, on behalf of Molstad Excavating, Inc.(Molstad) is authorized to act on behalf of Molstad and bind Molstad for purposes of this Consent Order; has read the Consent Order, knows and fully understands its content and effect; has been advised of the right to a hearing in this matter, the right to be represented by legal counsel, the right to present evidence and arguments to the Commission, and the right to appeal from an adverse determination after hearing; and that by signing this Consent to Entry of Order waives those rights in their entirety on behalf of Molstad, and consents to entry of this Order by the North Dakota Public Service Commission to resolve the violation without further administrative proceedings. It is further expressly understood that this Order constitutes the entire settlement agreement between the parties, there being no other promises or agreements, either express or implied.

DATED this 23<sup>rd</sup> day of October 2014

Molstad Excavating, Inc.

By *Sharetta*

Its *VP Operations*  
{TITLE}