

**STATE OF NORTH DAKOTA**

**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
MBC Corp.  
Damage Prevention Enforcement**

**Case No. GS-14-725**

**CONSENT ORDER**

**NOTE: Date of Order will be inserted here when ready for Commission action**

The North Dakota Public Service Commission (Commission) finds:

MBC Corp. (MBC) is a North Dakota corporation with offices located at 4050 Grandview Dr. Suite 101, Grand Forks, ND 58201-7215.

On September 23, 2014, the Commission received a ND One-Call Complaint from Xcel Energy (Xcel). The complaint alleged a violation by MBC of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

Commission Advocacy Staff (Staff) conducted an investigation including communication with MBC, Xcel, 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:

Unless otherwise prohibited by specific statute or rule, informal disposition may be made of any adjudicative proceeding, or any part or issue thereof, by stipulation, settlement, waiver of hearing, consent order, default, alternative dispute resolution, or other informal disposition, subject to agency approval. Any administrative agency may adopt rules of practice or procedure for informal disposition if such rules do not substantially prejudice the rights of any party. Such rules

may establish procedures for converting an administrative matter from one type of proceeding to another type of proceeding.

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.

North Dakota Administrative Code section 69-02-04-05 provides:

In any proceeding in which the commission is authorized to act after opportunity for hearing, opportunity is afforded by service of notice fixing a reasonable period of time within which any person desiring to be heard may file a protest or request for a hearing. If a protest or request for hearing is not filed within the time provided, the commission may dispose of the matter on the basis of the pleadings, other submittals, and the studies and recommendations of the staff. A party not requesting oral hearing in the party's pleading is deemed to have waived a hearing for the purpose of the decision, but not for the purpose of applying for rehearing with respect to the decision. If a person requests a hearing but does not show good cause, the commission may determine the matter without a hearing.

### **Investigation Summary**

Based on its investigation, Staff determined that on May 12, 2014, the homeowner rather than MBC personnel provided an excavation notice to the NDOC Notification Center for work to begin on May 14, 2014 at 416 South 4<sup>th</sup> St in Grand Forks, North Dakota. The NDOC Notification Center assigned locate ticket number 14047182 to the excavation notice. Under North Dakota Century Code section 49-23-04(3)(g), the expiration date for the locate ticket is June 4, 2014.

Based on its investigation, Staff concluded that on June 23, 2014, MBC personnel

began an excavation as defined under North Dakota Century Code section 49-23-01(7) while performing dig in for garage footings at 416 South 4<sup>th</sup> St in Grand Forks, North Dakota.

Based on its investigation, Staff concluded that a natural gas service line was damaged during this excavation and that the amount of damage was approximately \$382.45. The operator has not been reimbursed for damages. One customer lost service, 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 MBC and Xcel under North Dakota Century Code section 49-23-04(1) prior to excavation that would relieve MBC 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 MBC 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.

This agreement may be executed in counterparts and duplicate copies, each of which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.

### **Concurrences**

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

In the attached Consent to Entry of Order, MBC 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.

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:

1. MBC 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.
2. MBC is assessed a civil penalty of \$1500.
3. Of the \$1500 penalty, MBC shall remit \$750 payable to the North Dakota Public Service Commission within ten business days of service of this Order. Of the \$1500 penalty, \$750 is suspended subject to the following conditions:
  - a. MBC shall remit to the North Dakota Public Service Commission the \$750 suspended penalty if found in violation of the North Dakota One Call law a second time within five years of the date of this order.
  - b. The \$750 penalty will be remitted in addition to any fines imposed for a second violation.

### PUBLIC SERVICE COMMISSION

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**Randy Christmann**  
Commissioner

**Julie Fedorchak**  
Chairman

**Brian P. Kalk**  
Commissioner

**CONSENT TO ENTRY OF ORDER**

The undersigned, on behalf of MBC Corp. (MBC) is authorized to act on behalf of MBC and bind MBC 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 MBC, 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 2<sup>nd</sup> day of February 2016

MBC Corp.

By Michael J. Budzik

Its president, MBC Corp  
{TITLE}