

# Memorandum

To: Commissioners Kalk, Christmann and Fedorchak

From: Victor Schock Public Utility Analyst &

Date: June 29, 2016

Re: One Call Concepts unpaid contractor fees cases PU-14-771, PU-14-773, PU-14-774, PU-14-797, PU-14-803, PU-14-804, PU-14-805, PU-15-123, PU-15-162, PU-15-200, PU-15-201, PU-15-203, PU-15-204, PU-15-205, PU-15-207, PU-15-208, PU-15-210, PU-15-212, PU-15-213, PU-15-214

As of June 24, 2016 the commission has 20 open cases filed by One Call concepts that concern situations where excavators have not paid the invoices sent out by One Call concepts. The unpaid invoices range from \$14.25 up to \$347.60, the total of all invoices is \$1782.95. The invoices are for location notices filed by the excavators with One Call Concepts, a typical charge to an excavator for the location notice is \$1.10 per notice. They pertain to North Dakota Century Code section 49-23-03(2) which states: An excavator licensed under this chapter shall participate in and share in the costs of a statewide notification center on a per-call basis. An operator, installing the operator's own facilities, may not be charged as an excavator.

On June 8, 2016 the commission discussed the cases in the admin portion of their regular meeting with staff as well as Mark Dougherty with Associated General Contractors and Ryan Schmaltz with One Call Concepts.

The commissioners brought up many other options for resolving these situations, some of them would be undertaken by One Call Concepts or the One Call Board, and others would be commission actions.

The commission noted the following alternatives to incent excavators to pay the bills:

1. Deny new locate requests placed by an excavator who has not paid their bill.
2. Engage the services of a collection agency.
3. Increase the fee amount charged to an excavator who fails to pay their bill.
4. No longer charge excavators for locates. Fund 811 program as other states do by charging more to the operators.
5. Consolidate hearings for this type of case filed with the commission in such a way that the commission may hear 10-20 cases in a single hearing session.
6. The commission pursues the highest value cases to determine if streamlining is possible.

7. The commission directs staff to make these cases a lower priority and only direct resources to them when there are no other priorities.

The commission staff noted the following concerns:

1. Amount of resources necessary to process these cases vs the resources available to the commission.
2. If an excavator does not pay a \$14-350 bill from One Call Concepts, how likely are they to pay a penalty from the Public Service Commission that is likely to be less than \$500?
3. If the commission would assess a penalty to any of the excavators in these cases, the monies would not be available to One Call Concepts to cover the unpaid invoices, nor is it available to the Commission to cover the costs of processing the cases. Rather, it is sent to the North Dakota state general fund.
4. The cases may not be processed with a lesser degree of scrutiny, staff and legal review than that which is applied to other cases processed by the commission.
5. Are there other laws that mandate a company must pay a 3<sup>rd</sup> party, and if so does some government body handle non-payment issues?

Mark Dougherty and Ryan Schmaltz noted their concerns:

1. Enforcement of the law must be done regardless of the dollar value impact.
2. Excavators learning that there is no risk to them if they do not pay their bills.
3. Not placing new locate request for excavators who have not paid is a safety concern.

Next steps:

Commissioners to consider the options available.

Mark Dougherty will direct One Call Concepts to research how many non-payment issues since oil price and activity downturn to ascertain if the problem has become better or worse.

Mark Dougherty and Ryan Schmaltz to advise commission staff which of the remaining open cases have either been paid or the company is no longer in business. Staff will take appropriate action on those cases based on that information.

ND One Call Board to discuss how they would like to proceed at their August 11<sup>th</sup> meeting.