

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	Case No. PU-16-194
)	 PU-16-771
vs.)	
)	CONSENT AGREEMENT
Master Construction, Co., Inc.,)	
)	
Respondent .)	

Preliminary Statement

On December 21, 2016, the Commission received a ND One-Call Complaint from Xcel Energy (Xcel) under Case No. PU-16-771. The complaint alleged a violation by Master Construction, Co., Inc., ("Master") of North Dakota Century Code section 49-23-05(5) for failure to excavate in a careful and prudent manner.

North Dakota Century Code section 49-23-05(5) provides that an "excavator shall conduct the excavation in a careful and prudent manner." As a result of its investigation, Public Service Commission Advocacy Staff ("Advocacy Staff") believed Master violated North Dakota Century Code section 49-23-05(5).

Previously, on June 22, 2016, Master entered into a Consent Order for violation of North Dakota Century Code Section 49-23-04(1) for failure to contact the ND One-Call Notification Center forty-eight hours before beginning an excavation. As a result of the Consent Order, Master was assessed a civil penalty in the amount of \$3400. \$2400 was to be remitted within ten business days of service of the Consent Order. The remaining \$1000 civil penalty was suspended on condition that Master committed no

further violations of the North Dakota One-Call Law within five years of June 22, 2016. Master remitted the \$2400 penalty in compliance with the Consent Order. However, pursuant to the violation in Case No. PU-16-771, Master “shall remit the suspended portion of the penalty, \$1000 . . . in addition to any additional fines or penalties imposed by the Commission for [a] subsequent violation.” See June 22, 2016 Consent Order, Case No. PU-16-194.

Master and Advocacy Staff engaged in good faith settlement discussions resulting in this Consent Agreement. Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and that entry of this Consent Agreement is the most appropriate means of resolving this administrative action, Advocacy Staff and Master agree to the following, subject to the approval and acceptance of the Commission:

1. On December 21, 2016, Xcel filed a complaint with the Commission.
2. On December 27, 2016, Master filed a response accepting responsibility for the incident.
3. Master and Advocacy Staff engaged in good faith settlement discussions.
4. This Agreement is intended to resolve the violation alleged in the complaint.

Advocacy Staff and Master agree to settle this matter on the following terms:

- a. Master violated North Dakota Century Code section 49-23-05(5) by failing to excavate in a careful and prudent manner.
- b. The violation from Case No. PU-16-771 occurred within five years of the June 22, 2016 Consent Order from Case No. PU-16-194.

- c. Pursuant to good faith settlement discussions, Master agrees to be assessed a civil penalty of \$3,400, payable to the North Dakota Public Service Commission within ten business days of service of an order accepting or adopting the Consent Agreement.
 - d. If approved by the Commission, Master expressly waives any further procedural requirements with respect to the issuance of the Consent Agreement and Order. Master waives its right to contest this matter or the validity of this Consent Agreement and Order, including all rights to administrative or judicial hearings or appeals.
 - e. Pursuant to the Consent Order signed by Master and the Commission in case no. PU-16-194, Master must remit the suspended portion of the penalty in that case, \$1000. The \$1000, payable to the North Dakota Public Service Commission is due within ten business day of service of an order accepting or adopting the Consent Agreement.
 - f. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Agreement and Order.
5. This agreement may be executed in counterparts and duplicate copies, each which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.
6. The undersigned is authorized to act on behalf of Master and bind Master for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 20th day of January, 2017

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By: _____


John M. Schuh
Advocacy Counsel
12th Floor, Dept. 408
600 Boulevard Ave.
Bismarck, ND 58505-0480

Dated this 2nd day of January, 2017

Master Construction, Co., Inc.

By: Rachael Hardy Human Resources
{insert name and title}