

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Master Construction Co., Inc.
Damage Prevention Enforcement

Case No. PU-16-194

Public Service Commission
Master Construction Co., Inc.
Damage Prevention Enforcement

Case No. PU-16-771

AFFIDAVIT OF SERVICE BY CERTIFIED AND REGULAR MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Geralyn R. Schmaltz deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **1st day of February, 2017**, she deposited in the United States Mail, at Bismarck, North Dakota, **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and containing photocopy of:

- **Order on Consent Agreement**

The envelope was addressed as follows:

Master Construction Co., Inc.
PO Box 788
 Fargo, ND 58107-0788
Cert. No. 7015 0640 0006 6993 6651

Geralyn R. Schmaltz further deposes and says that on the **1st day of February, 2017** she deposited in the United States Mail, Bismarck, North Dakota **two** envelopes by regular mail, with postage fully prepaid, securely sealed, containing a copy of the same.

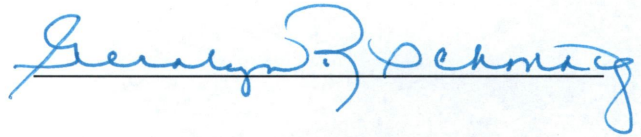
The envelopes were addressed as follows:

Scott MacLean
Montana-Dakota Utilities Co.
1133 W. Broadway
Dickinson, ND 58601

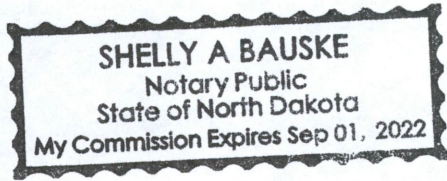
Lisa Kalberg
Xcel Energy
825 Rice Street
St. Paul, MN 55372

The addresses shown are the respective addressee's last reasonably ascertainable mailing address.

Subscribed and sworn to before me
this **1st day of February, 2017**.




Notary Public



SEAL

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Master Construction Co., Inc.
Damage Prevention Enforcement**

Case No. PU-16-194

**Public Service Commission
Master Construction Co., Inc.
Damage Prevention Enforcement**

Case No. PU-16-771

ORDER ON CONSENT AGREEMENT

January 31, 2017

Preliminary Statement

Master Construction Co., Inc. is a North Dakota Company with offices in Fargo, Bismarck, Dickinson and Grand Forks.

On June 22, 2016, the Commission adopted a Consent Order under which Master Construction Co., Inc. (Master Construction) was assessed a civil penalty for failure to contact the ND One-Call Notification Center forty-eight hours before beginning an excavation at the NW corner of the intersection of 40th St. SW and Highway 22 in Dickinson, ND, Case No. PU-16-194. The Commission suspended \$1,000 of the \$3,400 penalty assessed, on the condition that Master Construction commits no further violations of the North Dakota One-Call Law within five years of June 22, 2016. In the event the Commission would find Master Construction violated the North Dakota One-Call Law within five years of June 22, 2016, Master Construction would remit the \$1,000 in addition to any additional penalties imposed by the Commission for the subsequent violation.

On December 21, 2016, the Commission received a ND One-Call Complaint from Xcel Energy, aka Northern States Power Company (NSP), alleging a violation by Master Construction of North Dakota Century Code section 49-23-05(5) for failure to excavate in a careful and prudent manner at the intersection of 43 1/2 Street and 13th Ave S. in Fargo, ND, Case No. PU-16-771.

Master Construction was using a skid loader to pull dirt away from the top of a marked six-inch gas main and struck a gas main tee causing \$8,398 in damages. The incident resulted in an outage of 33 NSP gas services including natural gas supply to multiple-meter apartment buildings.

North Dakota Century Code section 49-23-05(5) provides that an "excavator shall conduct the excavation in a careful and prudent manner."

On December 22, 2016, Advocacy Staff sent a letter enclosing the One-Call Complaint to Master Construction.

On December 30, 2016, Master Construction filed a response to the One-Call Complaint admitting they were responsible for the incident but did not consider it was the result of digging.

As a result of its investigation, Public Service Commission Advocacy Staff (Advocacy Staff) believes Master Construction violated North Dakota Century Code section 49-23-05(5).

Master Construction and Advocacy Staff engaged in good faith settlement discussions.

On January 20, 2017, the Public Service Commission Advocacy Staff and Master Construction Co., Inc. filed a Consent Agreement intended to resolve Case No. PU-16-194 and Case No. PU-16-771.

Under the Consent Agreement, Master Construction agrees to be assessed a civil penalty of \$3,400 in Case No. PU-16-771 and agrees to pay the \$1,000 of penalty suspended in Case No. PU-16-194. Master Construction agrees to remit \$4,400, payable to the North Dakota Public Service Commission, within ten business days of service of this Order.

Having considered this matter, the Commission finds the January 20, 2017 Consent Agreement is reasonable and acceptable. Therefore, the Commission issues the following:

Order


The Commission Orders:

1. The Consent Agreement filed by Master Construction and Advocacy Staff on January 20, 2017, is approved. A copy of the Consent Agreement is attached to and made a part of this Order.
2. Master Construction will remit a penalty of \$4,400, payable to the North Dakota Public Service Commission within ten business days of service of this Order.

PUBLIC SERVICE COMMISSION



Brian P. Kalk
Commissioner



Randy Christmann
Chairman



Julie Fedorchak
Commissioner

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:

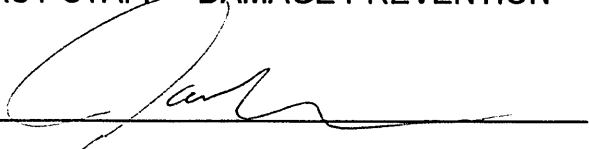
- a. Master violated North Dakota Century Code section 49-23-05(5) by failing to excavate in a careful and prudent manner.
- b. The violation from Case No. PU-16-771 occurred within five years of the June 22, 2016 Consent Order from Case No. PU-16-194.

- 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: Richard Hardy Human Resources
{insert name and title}