

# Public Service Commission

## State of North Dakota

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### COMMISSIONERS

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August 28, 2017

Darrell Nitschke  
Executive Director  
ND Public Service Commission  
600 E. Boulevard Ave. Dept. 408  
Bismarck, ND 58505-0480

Re: Case No. PU-17-221  
Public Service Commission  
Murphy Pipe & Civill LLC  
Damage Prevention Enforcement

Dear Mr. Nitschke:

Enclosed is a copy of the Consent Agreement to be filed in the above captioned proceedings.

Best Regards,

A handwritten signature in blue ink, appearing to read "John Schuh".

John Schuh  
Legal Counsel

Enclosure

5 **PU-17-221** Filed: 8/28/2017 Pages: 5  
**Consent Agreement**

Public Service Commission

**BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA**

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<b>PUBLIC SERVICE COMMISSION,</b>	)	
	)	
<b>Complainant,</b>	)	<b>Case No. PU-17-221</b>
	)	
<b>vs.</b>	)	<b>CONSENT AGREEMENT</b>
	)	
<b>Murphy Pipe &amp; Civil LLC</b>	)	
	)	
<b>Respondent</b>	)	

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**Preliminary Statement**

On May 23, 2017, the Commission received a ND One-Call Complaint from Ryan Olson with Northwest Communications Coop (Northwest). The complaint alleged a violation by Murphy Pipe & Civil LLC (MPC) of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

North Dakota Century Code section 49-23-04(1) states that 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. As a result of its investigation, Staff concluded that MPC violated North Dakota Century Code section 49-23-04(1).

MPC and Public Service Commission Advocacy Staff (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, the Advocacy Staff and Respondent make the following agreement:

1. Advocacy Staff and MPC agree to settle this matter on the following terms:
  - a. MPC violated N.D.C.C. § 49-23-04(1), by failing to provide an excavation or location notice at least 48 hours before beginning an excavation.
  - b. MPC agrees to be assessed a civil penalty of \$1,000. MPC agrees to remit \$500 of the \$1,000, payable to the North Dakota Public Service Commission, within ten business days of service of an Order approving the Consent Agreement (Order). The remaining \$500 civil penalty is suspended on the condition that MPC commits no further violations of the North Dakota One Call Law (North Dakota Century Code Chapter 49-23) within five years of after the date of the Order.
  - c. In the event the Commission finds MPC violated the North Dakota One Call Law within five years of the date of the Order, MPC shall remit the suspended portion of the penalty, \$500, within the time ordered by the Commission, in addition to any additional fines or penalties imposed for the subsequent violation
  - d. If within five years of the date of the Order there is no subsequent violation of the North Dakota One Call Law by MPC, the suspended portion of the penalty, \$500, is withdrawn.

- e. If approved by the Commission, MPC expressly waives any further procedural requirements with respect to the issuance of the Consent Agreement and Order, MPC 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.
  - f. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Agreement and Order.
2. 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.
  3. The undersigned on behalf of Murphy Pipe & Civil LLC is authorized to act on behalf of Murphy Pipe & Civil LLC and bind Murphy Pipe & Civil LLC for purposes of this Consent Agreement, knows and fully understands the content and effect.

Dated this 28<sup>th</sup> day of August, 2017

PUBLIC SERVICE COMMISSION  
ADVOCACY STAFF – DAMAGE PREVENTION


By: \_\_\_\_\_

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

Dated this 25<sup>th</sup> day of August, 2017

Murphy Pipe & Civil LLC

By:

  
\_\_\_\_\_

M. A. O' Sullivan  
C.O.O.

{insert name and title}