

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Kamphuis Pipeline Co.
Damage Prevention Enforcement**

Case No. PU-17-293

ORDER ON CONSENT AGREEMENT

September 20, 2016

Preliminary Statement

On July 17, 2017, the Commission received a ND One-Call Complaint (Complaint) from Mike Mittleider with BEK Communications Cooperative (BEK) alleging a violation by Kamphuis Pipeline Co. (Kamphuis) of North Dakota Century Code section 49-23: One-Call Excavation Notice System.

On July 21, 2017, the Commission sent a letter to Kamphuis enclosing the One-Call Complaint.

On July 31, 2017, Kamphuis filed a response to the One-Call Complaint.

On September 5, 2017, the Public Service Commission Advocacy Staff (Advocacy Staff) and Kamphuis filed a Consent Agreement.

Discussion

Kamphuis Pipeline Co. is a foreign corporation authorized to do business in North Dakota with offices located at 6115 28th Street SE, Grand Rapids, Michigan 49546.

North Dakota Century Code section 49-23-06(1)(a) states that if any damage occurs to an underground facility or its protective covering, the excavator shall notify the operator as soon as reasonably possible. North Dakota Century Code section 49-23-06(1)(b) states that an excavator shall delay backfilling in the immediate area of the damaged underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise. The repair of damage must be performed by the operator or by qualified personnel authorized by the operator.

As a result of its investigation, Advocacy Staff determined that Kamphuis was installing water service to a residence at Tappen, North Dakota. On July 13, 2017, Kamphuis caused damage to a 24-strand fiber optic cable of approximately \$7,000. The damage affected the 911 and internet services of 9 customers of BEK.

As a result of its investigation, Staff believes that Kamphuis violated North Dakota Century Code section 49-23-06(1).

Kamphuis and Advocacy Staff engaged in good faith settlement discussions resulting in a Consent Agreement intended to resolve the violations alleged in the Complaint.

Under the Consent Agreement, Kamphuis agrees to be assessed a civil penalty of \$10,500. Kamphuis agrees to remit \$5,000 of the \$10,500, payable to the North Dakota Public Service Commission, within ten business days of service of this Order. The remaining \$5,500 civil penalty is suspended on the condition that Kamphuis commits no further violations of the North Dakota One Call Law (North Dakota Century Code Chapter 49-23) within five years of the date of this Order approving the Consent Agreement.

Having considered this matter, the Commission finds the Consent Agreement filed on July 17, 2017, is reasonable and acceptable. Therefore, the Commission issues the following:

Order

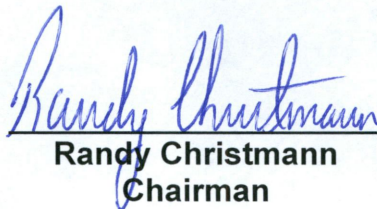
The Commission Orders:

1. The Consent Agreement filed by Kamphuis and Advocacy Staff on July 17, 2017, is approved. A copy of the Consent Agreement is attached to and made a part of this Order.
2. Kamphuis will remit a penalty of \$5,000, payable to the North Dakota Public Service Commission within ten business days of service of this Order.

PUBLIC SERVICE COMMISSION



Brian Kroshus
Commissioner



Randy Christmann
Chairman



Julie Fedorchak
Commissioner

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	Case No. PU-17-293
)	
vs.)	CONSENT AGREEMENT
)	
Kamphuis Pipeline Co.)	
)	
Respondent)	

Preliminary Statement

On July 17, 2017, the Commission received a ND One-Call Complaint from Mike Mittleider with BEK Communications Cooperative (BEK). The complaint alleged a violation by Kamphuis Pipeline Co. (Kamphuis) of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

North Dakota Century Code section 49-23-06(1)(a) states that if any damage occurs to an underground facility or its protective covering, the excavator shall notify the operator as soon as reasonably possible. North Dakota Century Code section 49-23-06(1)(b) states that an excavator shall delay backfilling in the immediate area of the damaged underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise. The repair of damage must be performed by the operator or by qualified personnel authorized by the operator. As a result of its investigation, Staff believes that Kamphuis violated North Dakota Century Code section 49-23-06(1).

Kamphuis 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 Kamphuis agree to settle this matter on the following terms:

- a. Kamphuis violated N.D.C.C. § 49-23-06(1), by failing to notify the operator of damage to its underground facility or its protective covering as soon as reasonably possible and failing to delay backfilling the immediate area of the damaged underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise.
- b. Kamphuis agrees to be assessed a civil penalty of \$10,500. Kamphuis agrees to remit \$5000 of the \$10,500, payable to the North Dakota Public Service Commission, within ten business days of an Order approving the Consent Agreement (Order). The remaining \$5500 civil penalty is suspended on the condition that Kamphuis commits no further violations of the North Dakota One Call Law (North Dakota Century Code Chapter 49-23) within five years of the date of the Order.
- c. In the event the Commission finds Kamphuis violated the North Dakota One Call Law within five years of the date of the Order, Kamphuis shall remit the suspended portion of the penalty, \$5500, 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

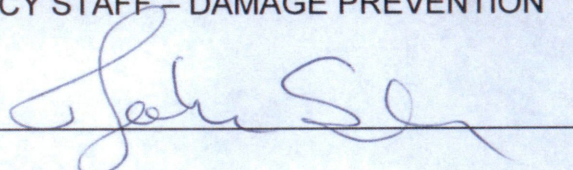
the North Dakota One Call Law by Kamphuis, the suspended portion of the penalty, \$5500, is withdrawn.

- e. If approved by the Commission, Kamphuis expressly waives any further procedural requirements with respect to the issuance of the Consent Agreement and Order, Kamphuis 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 Kamphuis Pipeline Co. is authorized to act on behalf of Kamphuis Pipeline Co. and bind Kamphuis Pipeline Co. for purposes of this Consent Agreement, knows and fully understands the content and effect.

Dated this 5th day of September, 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 30th day of August, 2017

Kamphuis Pipeline Co.

By: Kathryn Regan / Office Manager
{insert name and title}