



# Public Service Commission

## State of North Dakota

### COMMISSIONERS

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Executive Secretary  
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November 9, 2018

Kelly Smith  
MP Nexlevel, LLC  
CT Corporation System  
120 W Sweet Ave  
Bismarck, ND 58504-5566

Re: ND One-Call Excavation Notice System: North Dakota Century Code Chapter 49-23

Dear Kelly:

Enclosed is a copy of a ND One-Call Complaint, against MP Nexlevel, LLC, received by the North Dakota Public Service Commission on November 7, 2018, from Perry Kapaun at Barnes Rural Water District, of Valley City, ND, Case Number PU-18-383. The location of the damage identified in the complaint is approximately LaMoure and Ransom counties in ND.

I am sending you this information so that you are aware of the complaint and may respond with information concerning the complaint. **Please respond to Darrell Nitschke, Executive Secretary, North Dakota Public Service Commission, 600 East Boulevard Avenue, Dept 408, Bismarck, ND 58505-0480 by November 26, 2018**, with your written account of the event, including the applicable One Call locate ticket number for work performed at the address indicated.

Your response and the ND One-Call Complaint will be reviewed to determine whether there may be a violation of the One-Call Excavation Notice System law.

If I do not receive a response by the date noted, I will determine whether there was a violation, without your side of the story, based on the facts contained in this complaint. If I conclude a violation did occur I will file a formal complaint against MP Nexlevel, LLC with the Commission, which may result in a penalty up to \$25,000 per violation as approved by the North Dakota Legislative Assembly in 2013 under North Dakota Century Code Section 49-07-01.1.

Please contact me at 701-328-3397 or at [vschock@nd.gov](mailto:vschock@nd.gov) with any questions regarding this correspondence.

Sincerely,

Victor Schock  
Public Utilities Division  
North Dakota Public Service Commission  
600 E Boulevard Ave, Dept 408  
Bismarck, ND 58505-0480

Enc: ND One-Call Complaint  
c: Perry Kapaun

2 PU-18-383 Filed: 11/9/2018 Pages: 2  
Letter enclosing North Dakota One-Call Complaint

Public Service Commission

Victor Schock



# ND ONE-CALL COMPLAINT

Public Service Commission

SFN 59067 (5-17)

To allege a violation of the One-Call Excavation Notice System Law: North Dakota Century Code Chapter 49-23

## PART A – WHO IS SUBMITTING THIS COMPLAINT (COMPLAINANT)

Company/Person Barnes Rural Water District/Perry Kapaun	Street Address 421 West Main Street	City Valley City	State and Zip Code ND 58072
Telephone and Cell Phone Number 701-845-1117 & 701-490-1797	Email Address brwd@brwd.org	Date 11-7-2018	
<input type="checkbox"/> Complainant is willing and able to testify on the complaint if matter goes to formal hearing			

## PART B – WHO VIOLATED THE ONE-CALL REGULATIONS (RESPONDENT)

Company/Person MP Nexlevel LLC/Kelly Smith	Street Address 500 County RD 37 E	City Maple Lake	State and Zip Code MN 55358
Telephone and Cell Phone Number 320-963-2870 & 320-402-4884	Email Address ksmith@mpnexlevel.com		

## PART C – ALLEGED VIOLATION

<input type="checkbox"/> Operator failed to provide or update the information provided to the notification center on a timely basis <input type="checkbox"/> Excavator failed to provide excavation or location notice at least 48 hours before beginning any excavation <input type="checkbox"/> Excavator failed to provide required information in excavation or location notice <input type="checkbox"/> Notification center failed to transmit the notice to every operator that has an underground facility in the area of the excavation <input type="checkbox"/> Notification center failed to inform the excavator of the names of operators of underground facilities in the area <input type="checkbox"/> Operator failed to locate and mark underground facility within 48 hours <input type="checkbox"/> Excavation started prior to underground facility locate <input type="checkbox"/> Operator failed to mark underground facility within 24 inches horizontally <input type="checkbox"/> Excavator failed to renew excavation or location request prior to the expiration of the twenty-one-day period <input checked="" type="checkbox"/> Excavator failed to conduct the excavation in a careful and prudent manner to avoid damage of underground facilities <input type="checkbox"/> Excavator failed to maintain the markings during excavation <input checked="" type="checkbox"/> Other (identify the specific section of NDCC Chapter 49-23) <u>Did not try to find line (pothole)</u>
Location of Violation: LaMoire county, Greenville TWP sec 3 SE and Ransom County, Ft. Ransom TWP sec 10 SE
Date and Time of Violation: 9-11-18 @ 2:30 pm and 9-17-18 @ 5 pm
Description (summarize the observations on which you rely to allege the violation) <i>If more space is required, please provide the description on a separate page.</i> The first hit they hit a big rock with plow and went to the side and dug an 8 foot hole to bury said rock and hit our line. Under ND One call Rural Water pre 2013 to locate to best of our ability, plus they were deeper than there ticket said. The second hit BRWD line came from easement into RW for 1000 feet. When contractor came to this 1000 feet they did not pot hole the water line. When I inspected with Brian Steiner (KLJ Engineer) the next day 3 out of the 4 BRWD flags and paint wre on target.

## PART D – DAMAGE

Fatalities	Injuries	In-patient Hospitalization
Underground facility type(s) and Operator(s) affected: 2" and 4" water mains		
Estimated Value of Damage (damage as defined under NDCC Chapter 49-23): \$ \$5,515.57	Number of Customers Affected 150	
Other impact of event:		
Please attach photos of Event Area or Damaged Facility		

## PART I – SIGNATURE

Signature of Person Filing Complaint Perry Kapaun		Date 11-7-2018
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**Submit**

If the "Submit" function is not working properly, please print the completed form and then either **email to** ndpsc@nd.gov, **fax to** 701-328-2410 or **send to** Public Service Commission, 600 E Boulevard Ave Dept 408, Bismarck ND 58505-0480.

Telephone: (701) 328-2400