

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Moorhead Electric, L.L.C.
Damage Prevention Enforcement

Case No. PU-18-411

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 **30th day of May 2019**, 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 a photocopy of:

- **Order On Consent Agreement**

The envelope was addressed as follows:

Robert Gephart
Moorhead Electric, L.L.C.
3451 University Drive South
Fargo, ND 58104
Cert. No. 7018 2290 0000 9934 4064

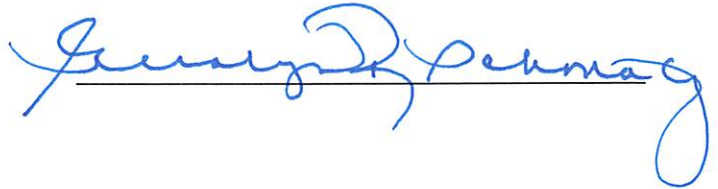
Geralyn R. Schmaltz further deposes and says that on the **30th day of May 2019**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by first class mail, fully prepaid, securely sealed each containing a photocopy of of the same document.

The envelope was addressed to:

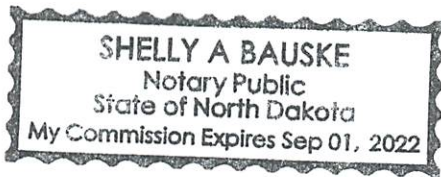
Lisa Kallberg
825 Rice St.
St. Paul, MN 55117

The addresses shown are the respective addressee's last reasonably ascertainable post office addresses.

Subscribed and sworn to before me
this **30th day of May 2019**.



A handwritten signature in blue ink, appearing to read "Jennifer D. Schma", written over a horizontal line.



A handwritten signature in blue ink, "Shelly A. Bauske", written over a horizontal line. Below the line, the text "Notary Public" is printed.

SEAL

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Moorhead Electric, LLC
Damage Prevention Enforcement

Case No. PU-18-411

ORDER ON CONSENT AGREEMENT

May 29, 2019

Preliminary Statement

On December 4, 2018, the Commission received a ND One-Call Complaint from Xcel Energy, Inc. (Xcel) alleging a violation by Moorhead Electric, LLC (Moorhead Electric) of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

On January 2, 2019, the Commission sent a letter to Moorhead Electric enclosing the December 4, 2018 ND One-Call Complaint.

On January 14, 2019, Moorhead Electric filed a response to the December 4, 2018 ND One-Call Complaint.

On May 14, 2019, a Consent Agreement, between Public Service Commission Advocacy Staff (Advocacy Staff) and Moorhead Electric was filed for the resolution of the complaint.

Discussion

Moorhead Electric, LLC is a foreign limited liability company with office(s) located at 3451 University Drive South, Fargo, North Dakota 58104-6225.

Xcel alleges a violation by Moorhead Electric of North Dakota Century Code section 49-23-05(5) for failure to conduct the excavation in a careful and prudent manner. The Complaint indicates that Moorhead Electric was boring in fiber conduit with a directional drill and caused \$4,426 of damage to a two-inch polyethylene plastic natural gas main and that no customers were affected.

North Dakota Century Code section 49-23-05(5) provides that to avoid damage and to minimize interference a ticket holder shall "Conduct the excavation in a careful and prudent manner."

As a result of its investigation, Advocacy Staff concluded that the damage was the result of misconduct by an Moorhead Electric employee who chose to ignore Moorhead Electric's training, safe work methods & procedures, and the instruction given that morning. Advocacy Staff concluded that Moorhead Electric violated North Dakota Century Code section 49-23-05(5).

Moorhead Electric and Advocacy Staff engaged in good faith settlement discussions resulting in a Consent Agreement intended to avoid further administrative proceedings or litigation.

Under the Consent Agreement, Moorhead Electric agrees to be assessed a civil penalty of \$900 payable to the North Dakota Public Service Commission within ten business days of service of an Order Adopting Consent Agreement (Order).

Having considered this matter, the Commission finds the Consent Agreement filed on May 14, 2019, is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Consent Agreement of Moorhead Electric and Advocacy Staff, filed May 14, 2019, is approved. A copy of the Consent Agreement is attached to and made a part of this Order.
2. Moorhead Electric is assessed a civil a penalty of \$900.
3. Moorhead Electric shall remit \$900 civil penalty, payable to the North Dakota Public Service Commission within ten business days of service of this Order.

PUBLIC SERVICE COMMISSION


Julie Fedorchak
Commissioner


Brian Kroshus
Chairman


Randy Christmann
Commissioner

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	Case No. PU-18-411
)	
vs.)	
)	CONSENT AGREEMENT
Moorhead Electric, LLC,)	
)	
Respondent .)	

Preliminary Statement

This Consent Agreement is entered into by and between Moorhead Electric, LLC. (MEI) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket No. PU-18-411.

On December 4, 2018, the Commission received a ND One-Call Complaint from Xcel Energy, Inc. (Xcel). The complaint alleged a violation by MEI of North Dakota Century Code section 49-23-05(5) for failure to conduct the excavation in a careful and prudent manner.

North Dakota Century Code section 49-23-05(5) provides that to avoid damage and to minimize interference a ticket holder shall "Conduct the excavation in a careful and prudent manner."

Having investigated the alleged violations, Staff believes that the damage was the result of misconduct by an MEI employee who chose to ignore MEI's training, safe work methods & procedures, and the instruction given to him that morning. With this in mind Staff believes MEI violated North Dakota Century Code section 49-23-05(5) in Case No. PU-18-411.

MEI and 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, Staff and MEI agree to the following, subject to the approval and acceptance of the Commission:

1. MEI violated North Dakota Century Code section 49-23-05(5) by failing to conduct the excavation in a careful and prudent manner.
2. MEI agrees to be assessed a civil penalty of \$900, payable to the North Dakota Public Service Commission within ten business days of service of an Order Adopting Consent Agreement (Order). Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violations alleged in the case.
3. MEI consents to the filing of the Consent Agreement and an Order and hereby waives any further procedural requirements with respect to the Order's issuance. Provided the Public Service Commission adopts this Consent Agreement and issues an Order consistent with it, MEI understands and agrees to waive all rights to contest the violation, the right to be represented by counsel, the right to present

evidence and arguments to the Commission, the right to cross examine witnesses, or contest the validity of this Consent Agreement and Order Adopting this Consent Agreement, including all rights to administrative or judicial hearings or appeals.

4. 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 MEI and bind MEI for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 13th day of May, 2019

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 6th day of May, 2019

Moorhead Electric, LLC

By: _____

Rob Gephart

Digitally signed by Rob Gephart
DN: C=US,
E=rgephart@moorheadelectric.com,
O=MEI, OU=MEI, CN=Rob Gephart
Date: 2019.05.06 08:49:40-05'00'

{insert name and title}