

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
KPH, Inc.
Damage Prevention Enforcement**

Case No. PU-18-412

**Public Service Commission
KPH, Inc.
Damage Prevention Enforcement**

Case No. PU-18-413

**Public Service Commission
KPH, Inc.
Damage Prevention Enforcement**

Case No. PU-18-414

**Public Service Commission
KPH, Inc.
Damage Prevention Enforcement**

Case No. PU-18-415

**Public Service Commission
KPH, Inc.
Damage Prevention Enforcement**

Case No. PU-18-416

**Public Service Commission
KPH, Inc.
Damage Prevention Enforcement**

Case No. PU-18-417

**Public Service Commission
KPH, Inc.
Damage Prevention Enforcement**

Case No. PU-18-418

AFFIDAVIT OF SERVICE BY CERTIFIED & 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 **4th day of December 2019** she deposited in the United States Mail at Bismarck, North Dakota,

Case Nos. PU-18-412, 18-413, 18-414, 18-415, 18-416, 18-417 and 18-418
Affidavit of Service
Page 1 of 2

12 PU-18-418 Filed 12/04/2019 Pages: 11
Affidavit of Service, Cert. and Reg. Mail - Order on Consent Agreement
12 PU-18-417 Filed 12/04/2019 Pages: 11
Affidavit of Service, Cert. and Reg. Mail - Order on Consent Agreement
12 PU-18-416 Filed 12/04/2019 Pages: 11
Affidavit of Service, Cert. and Reg. Mail - Order on Consent Agreement

12 PU-18-415 Filed 12/04/2019 Pages: 11
Affidavit of Service, Cert. and Reg. Mail - Order on Consent Agreement
12 PU-18-414 Filed 12/04/2019 Pages: 11
Affidavit of Service, Cert. and Reg. Mail - Order on Consent Agreement
12 PU-18-413 Filed 12/04/2019 Pages: 11
Affidavit of Service, Cert. and Reg. Mail - Order on Consent Agreement
12 PU-18-412 Filed 12/04/2019 Pages: 11
Affidavit of Service, Cert. and Reg. Mail - Order on Consent Agreement

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:

Eric Merhiy, President
KPH, Inc.
9530 39th Street S
Fargo, ND 58104
Cert. No. 7018 2290 0000 6607 8466

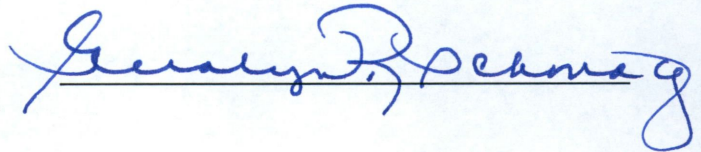
Geralyn R. Schmaltz further deposes and says that on the **4th day of December 2019**, she deposited in the United States mail, Bismarck, North Dakota, **one** envelope by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

The envelope was addressed as follows:

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

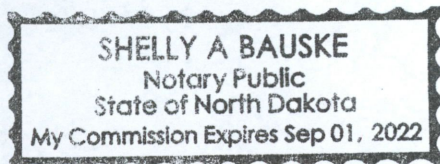
Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **4th day of December 2019**.



Notary Public

SEAL



**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
KPH, Inc.
Damage Prevention Enforcement** **Case No. PU-18-412**

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**Public Service Commission
KPH, Inc.
Damage Prevention Enforcement** **Case No. PU-18-416**

**Public Service Commission
KPH, Inc.
Damage Prevention Enforcement** **Case No. PU-18-417**

**Public Service Commission
KPH, Inc.
Damage Prevention Enforcement** **Case No. PU-18-418**

ORDER ON CONSENT AGREEMENT

December 3, 2019

Preliminary Statement

On December 4, 2018, the Commission received seven ND One-Call Complaints from Xcel Energy, Inc. (Xcel) alleging violations by KPH, Inc. (KPH) of North Dakota Century Code (N.D.C.C.) section 49-23-05(5).

On January 2, 2019, the Commission sent seven letters to KPH enclosing the December 4, 2018 ND One-Call Complaints in the above-captioned Cases.

11	PU-18-417	Filed: 12/3/2019	Pages: 9	11	PU-18-414	Filed: 12/3/2019	Pages: 9
	Order on Consent Agreement				Order on Consent Agreement		
11	PU-18-416	Filed: 12/3/2019	Pages: 9	11	PU-18-413	Filed: 12/3/2019	Pages: 9
	Order on Consent Agreement				Order on Consent Agreement		
11	PU-18-415	Filed: 12/3/2019	Pages: 9	11	PU-18-412	Filed: 12/3/2019	Pages: 9
	Order on Consent Agreement				Order on Consent Agreement		

On January 17, 2019, KPH sent a response addressing each ND One-Call Complaint.

On September 18, 2019, Commission Advocacy Staff (Staff) filed seven formal complaints against KPH in the above-captioned Cases.

On October 22, 2019, the Commission found each of the seven formal complaints stated a prime facie case. The Commission served KPH with the Complaints.

On November 4, 2019, a Consent Agreement between Staff and KPH was filed with the Commission for the resolution of the seven formal complaints.

Discussion

KPH, Inc. is a domestic corporation with a principal address of 9530 39th St. South, Fargo, N.D. 58104.

In the each of the above-captioned cases, Xcel alleges a violation by KPH of N.D.C.C. section 49-23-05(5) for failure to conduct an excavation in a careful and prudent manner.

In Case No. PU-18-412, Xcel alleges that KPH hit a 5/8" polyethylene natural gas service line. Xcel estimated the value of the damage at \$893. One customer was affected.

In Case No. PU-18-413, Xcel alleges that KPH hit a 3-phase electric line. Xcel estimated the value of the damage at \$1,746. Complaint did not mention whether a customer was affected.

In Case No. PU-18-414, Xcel alleges that KPH hit a two-inch plastic natural gas main line. Xcel estimated the value of the damage at \$1,838. One customer was affected.

In Case No. PU-18-415, Xcel alleges that KPH hit a 5/8" polyethylene natural gas service line. Xcel estimated the value of the damage at \$756. One customer was affected.

In Case No. PU-18-416, Xcel alleges that KPH hit a 5/8" polyethylene natural gas service line. Xcel estimated the value of the damage at \$407. One customer affected.

In Case No. PU-18-417, Xcel alleges that KPH hit two 5/8" polyethylene natural gas service lines. Xcel estimated the value of the damage at \$480. Two customers were affected.

In Case No. PU-18-418, Xcel alleges that KPH hit a 5/8" polyethylene natural gas service line. Xcel estimated the value of the damage at \$606. One customer was affected.

N.D.C.C. section 49-23-05(5) provides that, to avoid damage and to minimize interference with underground facilities, a ticket holder shall "[c]onduct the excavation in a careful and prudent manner."

Having investigated the alleged violations, Staff concluded that KPH violated N.D.C.C. section 49-23-05(5) in each of the above-captioned Case numbers.

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

Under the Consent Agreement, KPH agrees to be assessed a civil penalty of \$1,000 in Case No. PU-18-412; \$1,000 in Case No. PU-18-413; \$1,100 in Case No. PU-18-414; \$1,000 in Case No. PU-18-415; \$1,000 in Case No. PU-18-416; \$1,000 in Case No. PU-18-417; and \$1,000 in Case No. PU-18-418 for a total of \$7,100. KPH agrees to remit \$6,100 of the \$7,100, payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving the Consent Agreement.

Having considered this matter, the Commission finds the Consent Agreement filed on November 4, 2019, is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Consent Agreement between KPH, Inc. and Commission Advocacy Staff, filed November 4, 2019, is approved. A copy of the Consent Agreement is attached to and made a part of the Order.
2. KPH is assessed a civil penalty of \$1,000 in Case No. PU-18-412; \$1,000 in Case No. PU-18-413; \$1,100 in Case No. PU-18-414; \$1,000 in Case No. PU-18-415; \$1,000 in Case No. PU-18-416; \$1,000 in Case No. PU-18-417; and \$1,000 in Case No. PU-18-418 for a total of \$7,100.
3. KPH shall remit \$6,100 payable to the North Dakota Public Service Commission within ten business days of service of the Order. The remaining \$1,000 civil penalty is suspended on condition that KPH commit no further violation of North Dakota Century Code chapter 49-23 within five years of the date of the Order.
4. In the event the Commission finds KPH violated North Dakota Century Code chapter 49-23 within five years of the date of the Order, KPH shall remit the suspended

portion of the penalty, \$1,000, within the time ordered by the Commission, and in addition, any penalties assessed for subsequent violation.

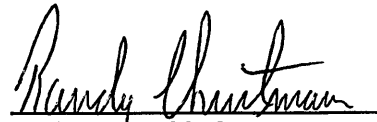
PUBLIC SERVICE COMMISSION



Julie Fedorchak
Commissioner



Brian Kroshus
Chairman



Randy Christmann
Commissioner

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)		
)		
Complainant,)	Case No.	PU-18-412
)		PU-18-413
)		PU-18-414
)		PU-18-415
)		PU-18-416
)		PU-18-417
)		PU-18-418
)		
vs.)		
)	CONSENT AGREEMENT	
KPH, Inc.,)		
)		
Respondent .)		

Preliminary Statement

This Consent Agreement is entered into by and between KPH, Inc. (KPH) and the Public Service Commission Advocacy Staff (Staff) together, (the "Parties") for resolution of Docket Nos. PU-18-412, PU-18-413, PU-18-414, PU-18-415, PU-18-416, PU-18-417 and PU-18-418.

Case No. PU-18-412: On December 4, 2018, the Commission received a ND One-Call Complaint from Xcel Energy, Inc. (Xcel). The complaint alleged a violation by KPH of North Dakota Century Code section (N.D.C.C.) 49-23-05(5) for failure to conduct the excavation in a careful and prudent manner.

Case No. PU-18-413: On December 4, 2018, the Commission received a ND One-Call Complaint from Xcel Energy, Inc. (Xcel). The complaint alleged a violation by KPH of N.D.C.C. 49-23-05(5) for failure to conduct the excavation in a careful and prudent manner.

Case No. PU-18-414: On December 4, 2018, the Commission received a ND One-Call Complaint from Xcel Energy, Inc. (Xcel). The complaint alleged a violation by KPH of N.D.C.C. 49-23-05(5) for failure to conduct the excavation in a careful and prudent manner.

Case No. PU-18-415: On December 4, 2018, the Commission received a ND One-Call Complaint from Xcel Energy, Inc. (Xcel). The complaint alleged a violation by KPH of N.D.C.C. 49-23-05(5) for failure to conduct the excavation in a careful and prudent manner.

Case No. PU-18-416: On December 4, 2018, the Commission received a ND One-Call Complaint from Xcel Energy, Inc. (Xcel). The complaint alleged a violation by KPH of N.D.C.C. 49-23-05(5) for failure to conduct the excavation in a careful and prudent manner.

Case No. PU-18-417: On December 4, 2018, the Commission received a ND One-Call Complaint from Xcel Energy, Inc. (Xcel). The complaint alleged a violation by KPH of N.D.C.C. 49-23-05(5) for failure to conduct the excavation in a careful and prudent manner.

Case No. PU-18-418: On December 4, 2018, the Commission received a ND One-Call Complaint from Xcel Energy, Inc. (Xcel). The complaint alleged a violation by KPH

of N.D.C.C. 49-23-05(5) for failure to conduct the excavation in a careful and prudent manner.

N.D.C.C.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 KPH violated N.D.C.C. 49-23-05(5) in Case Nos. PU-18-412, PU-18-413, PU-18-414, PU-18-415, PU-18-416, PU-18-417 and PU-18-418.

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

1. KPH violated N.D.C.C. 49-23-05(5) in Case Nos. PU-18-412, PU-18-413, PU-18-414, PU-18-415, PU-18-416, PU-18-417 and PU-18-418 by failing to conduct the excavations in a careful and prudent manner.
2. KPH agrees to be assessed a civil penalty of \$1,000 in Case No. PU-18-412, \$1,000 in Case No. PU-18-413, \$1,100 in Case No. PU-18-414, \$1,000 in Case No. PU-18-415, \$1,000 in Case No. PU-18-416, \$1,000 in Case No. PU-18-417, and \$1,000 in Case No. PU-18-418 for a total of \$7,100, KPH agrees to remit \$6,100 of the \$7,100, payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving the Consent Agreement. The remaining \$1,000 civil penalty is suspended on the

condition that KPH commits no further violations of the North Dakota One call Law (North Dakota Century Code Chapter 49-23) within five years after the date of the 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 Cases.

3. In the event the Commission finds KPH violated the North Dakota One Call Law within five years of the date of the Order, KPH shall remit the suspended penalty, within the time ordered by the Commission, in addition to any additional fines or penalties imposed for the subsequent violation.
4. If within five years of the date of the Order there is no subsequent violation of the North Dakota One Call Law by KPH, the penalty is withdrawn.
5. KPH consents to the filing of the Consent Agreement and an Order in the Cases 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, KPH understands and agrees in the Cases to waive all rights to contest the violations, 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.
6. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Agreement and Order.

7. 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.
8. The undersigned is authorized to act on behalf of KPH and bind KPH for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 4th day of November, 2019

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By: _____

Brian Johnson
Special Assistant Attorney General Bar ID 07397
North Dakota Public Service Commission
600 East Boulevard Avenue Dept. 408
Bismarck ND, 58505
701-328-2407

Dated this 1st day of November, 2019

KPH, Inc.

By: _____

Eric Merhiy, President

{insert name and title}