

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}