

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission **Case No. PU-18-422**
Master Construction Co., Inc.
Damage Prevention Enforcement

Public Service Commission **Case No. PU-18-423**
Master Construction Co., Inc.
Damage Prevention Enforcement

Public Service Commission **Case No. PU-18-425**
Master Construction Co., Inc.
Damage Prevention Enforcement

Public Service Commission **Case No. PU-18-426**
Master Construction Co., Inc.
Damage Prevention Enforcement

Public Service Commission **Case No. PU-18-427**
Master Construction Co., Inc.
Damage Prevention Enforcement

Public Service Commission **Case No. PU-18-428**
Master Construction Co., Inc.
Damage Prevention Enforcement

Public Service Commission **Case No. PU-18-429**
Master Construction Co., Inc.
Damage Prevention Enforcement

ORDER ON CONSENT AGREEMENT

November 21, 2019

Preliminary Statement

On December 4, 2018, the Commission received seven ND One-Call Complaints from Xcel Energy, Inc. (Xcel) alleging violations by Master Construction Co., Inc. (Master) of North Dakota Century Code (N.D.C.C.) section 49-23-05(5), Case numbers PU-18-422, PU-18-423, PU-18-425, PU-18-426, PU-18-427, PU-18-428, and PU-18-429.

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

On January 14, 2019, Master filed a response addressing each ND One-Call Complaint, and on June 21, 2019, Master filed a supplemental response addressing each ND One-Call Complaint in the above-captioned Cases.

On June 21, 2019, Xcel filed a response in the above-captioned Cases.

On October 10, 2019, a Consent Agreement, between Advocacy Staff (Staff) and Master was filed for the resolution of the ND One-Call Complaints in the above-captioned Cases.

Discussion

Master Construction Co., Inc. is a domestic corporation with a principal address of 1572 45th ST NW, Fargo, ND, 58102

In the each of the above-captioned cases, Xcel alleges a violation by Master 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-18-422, Xcel alleges that Master failed to conduct the excavation in a careful and prudent manner and hit an underground natural gas facility. Xcel estimated the value of the damage at \$718. One customer was affected.

In Case No. PU-18-423, Xcel alleges that Master failed to conduct the excavation in a careful and prudent manner and hit an underground natural gas facility. Xcel estimated the value of the damage at \$417. One customer was affected.

In Case No. PU-18-425, Xcel alleges that Master failed to conduct the excavation in a careful and prudent manner and hit an underground natural gas facility. Xcel estimated the value of the damage at \$486. Two customers were affected.

In Case No. PU-18-426, Xcel alleges that Master failed to conduct the excavation in a careful and prudent manner and hit an underground natural gas facility. Xcel estimated the value of the damage at \$1,017. One customer was affected.

In Case No. PU-18-427, Xcel alleges that Master failed to conduct the excavation in a careful and prudent manner and hit an underground natural gas facility. Xcel estimated the value of the damage at \$522. One customer affected.

In Case No. PU-18-428, Xcel alleges that Master failed to conduct the excavation in a careful and prudent manner and hit an underground natural gas facility. Xcel estimated the value of the damage at \$2,111. Two customers were affected.

In Case No. PU-18-429, Xcel alleges that Master failed to conduct the excavation in a careful and prudent manner and hit an underground natural gas facility. Xcel estimated the value of the damage at \$1,773. 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 Master violated N.D.C.C. section 49-23-05(5) in each of the above-captioned Case numbers.

Master 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, Master agrees to be assessed a civil penalty of \$1,000 in Case No. PU-18-422; \$1,500 in Case No. PU-18-423; \$1,500 in Case No. PU-18-425; \$1,500 in Case No. PU-18-426; \$1,500 in Case No. PU-18-427; \$1,500 in Case No. PU-18-428; and \$1,500 in Case No. PU-18-429 for a total of \$10,000, 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 October 10, 2019, is reasonable and acceptable. Therefore, the Commission issues the following:

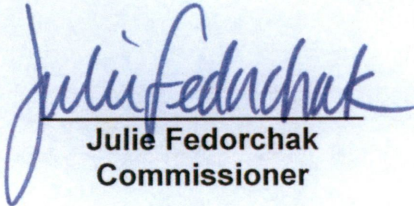
Order


The Commission Orders:

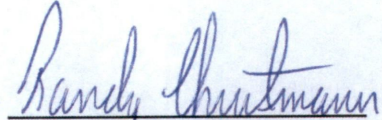
1. The Consent Agreement between Master and Staff, filed October 10, 2019, is approved. A copy of the Consent Agreement is attached to and made a part of the Order.
2. Master is assessed a civil penalty of \$1,000 in Case No. PU-18-422; \$1,500 in Case No. PU-18-423; \$1,500 in Case No. PU-18-425; \$1,500 in Case No. PU-18-426; \$1,500 in Case No. PU-18-427; \$1,500 in Case No. PU-18-428; and \$1,500 in Case No. PU-18-429 for a total of \$10,000.

3. Master shall remit the \$10,000 payable to the North Dakota Public Service Commission within ten business days of service of the 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-18-422
)	PU-18-423
)	PU-18-425
)	PU-18-426
)	PU-18-427
)	PU-18-428
)	PU-18-429
)	
vs.)	
)	CONSENT AGREEMENT
Master Construction, Inc.,)	
)	
)	
Respondent .)	

Preliminary Statement

This Consent Agreement is entered into by and between Master Construction, Inc. (Master) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket Nos. PU-18-422, PU-18-423, PU-18-425, PU-18-426, PU-18-427, PU-18-428 and PU-18-429.

Case No. PU-18-422: On December 4, 2018, the Commission received a ND One-Call Complaint from Xcel Energy, Inc. (Xcel). The complaint alleged a violation by Master 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-18-423: On December 4, 2018, the Commission received a ND One-Call Complaint from Xcel Energy, Inc. (Xcel). The complaint alleged a violation by Master of N.D.C.C. 49-23-05(5) for failure to conduct the excavation in a careful and prudent manner.

Case No. PU-18-425: On December 4, 2018, the Commission received a ND One-Call Complaint from Xcel Energy, Inc. (Xcel). The complaint alleged a violation by Master of N.D.C.C. 49-23-05(5) for failure to conduct the excavation in a careful and prudent manner.

Case No. PU-18-426: On December 4, 2018, the Commission received a ND One-Call Complaint from Xcel Energy, Inc. (Xcel). The complaint alleged a violation by Master of N.D.C.C. 49-23-05(5) for failure to conduct the excavation in a careful and prudent manner.

Case No. PU-18-427: On December 4, 2018, the Commission received a ND One-Call Complaint from Xcel Energy, Inc. (Xcel). The complaint alleged a violation by Master of N.D.C.C. 49-23-05(5) for failure to conduct the excavation in a careful and prudent manner.

Case No. PU-18-428: On December 4, 2018, the Commission received a ND One-Call Complaint from Xcel Energy, Inc. (Xcel). The complaint alleged a violation by Master of N.D.C.C. 49-23-05(5) for failure to conduct the excavation in a careful and prudent manner.

Case No. PU-18-429: On December 4, 2018, the Commission received a ND One-Call Complaint from Xcel Energy, Inc. (Xcel). The complaint alleged a violation by Master

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 Master violated N.D.C.C. 49-23-05(5) in Case Nos. PU-18-422, PU-18-423, PU-18-425, PU-18-426, PU-18-427, PU-18-428 and PU-18-429.

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

1. Master violated N.D.C.C. 49-23-05(5) in Case Nos. PU-18-422, PU-18-423, PU-18-425, PU-18-426, PU-18-427, PU-18-428 and PU-18-429 by failing to conduct the excavations in a careful and prudent manner.
2. Master agrees to be assessed a civil penalty of \$1,000 in Case No. PU-18-422, \$1,500 in Case No. PU-18-423, \$1,500 in Case No. PU-18-425, \$1,500 in Case No. PU-18-426, \$1,500 in Case No. PU-18-427, \$1,500 in Case No. PU-18-428, and \$1,500 in Case No. PU-18-429 for a total of \$10,000, payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving the Consent Agreement. 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. Master 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, Master 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.
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 Master and bind Master for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 10th day of October, 2019

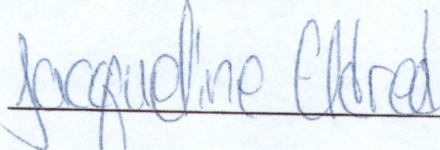
PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

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 10th day of October, 2019

Master Construction, Inc.

By:  HR Manager/
{insert name and title} Safety Coordinator