

Memorandum

To: Commissioners Christmann, Fedorchak and Kroshus

From: Victor Schock Public Utility Analyst

VS

Date: August 22, 2019

Re: ND One-Call Complaint
Case No. PU-19-286

On July 24, 2019, a ND One-Call Complaint was received from Kristy Wishinsky with Reservation Telephone Cooperative alleging that Highlands Engineering & Surveying, PLLC (Highlands) violated North Dakota Century Code Chapter 49-23 One-Call Excavation Notice System law by calling in a locate request as an excavation ticket rather than a survey ticket. On July 31, 2019 the complaint was forwarded to Highlands.

Staff investigation found that on July 23, 2019 Highlands called in an excavation notice with the type of work listed as "well site construction and installation of fence posts".

Highlands August 13, 2019 response to the complaint asserted that while they did not conduct the well site or fence installation, they were responsible for placing wooden stakes into the ground up to 36" deep.

North Dakota Century Code section 49-23-01(7) defines an excavation as "any operation in which earth, rock, or other materials in or below the ground is moved or otherwise displaced by means of hand or power tools, power equipment, or explosives and includes grading, trenching, digging, ditching, drilling, augering, tunneling, boring, scraping, and cable or pipe plowing and driving." Staff believes a stake being driven into the ground at any depth would meet this definition. For that reason staff does not believe Highlands actions constitute a violation.

Based on its investigation staff does not intend to file a formal complaint, recommends that no further action be taken and the case be closed.