

**BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA**

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<b>PUBLIC SERVICE COMMISSION,</b>	)	
	)	
<b>Complainant,</b>	)	<b>Case No. PU-19-365</b>
	)	
<b>vs.</b>	)	
	)	<b>CONSENT AGREEMENT</b>
<b>Heartland Excavating, LLC,</b>	)	
	)	
<b>Respondent .</b>	)	

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**Preliminary Statement**

This Consent Agreement is entered into by and between Heartland Excavating, LLC (Heartland) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket No. PU-19-365.

On November 15, 2019, the Commission received a ND One-Call Complaint from Montana-Dakota Utilities (MDU). The complaint alleged a violation by Heartland of North Dakota Century Code section 49-23-04(6)(g) for using a location for more than twenty-one days after the planned excavation date.

North Dakota Century Code section 49-23-04(6)(g) provides that "An excavator may not use a location more than twenty-one days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected."

Having investigated the alleged violations, Staff believes that Heartland violated North Dakota Century Code section 49-23-04(6)(g).

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

1. Heartland violated North Dakota Century Code section 49-23-04(6)(g) by using a location for more than twenty-one days after the planned excavation date.
2. Heartland agrees to be assessed a civil penalty of \$1,600. Heartland agrees to remit \$800 of the \$1,600, payable to the North Dakota Public Service Commission within ten business days of service of an Order Adopting Consent Agreement (Order). The remaining \$800 civil penalty is suspended on the condition that Heartland commits no further violation of North Dakota Century Code 49-23 within five years of the date of the Order.
3. Heartland 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, Heartland understands and agrees 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 Heartland and bind Heartland for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 1<sup>st</sup> day of July, 2020

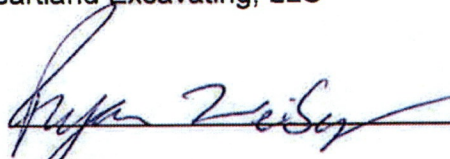
PUBLIC SERVICE COMMISSION  
ADVOCACY STAFF – DAMAGE PREVENTION

By: 

Brian Johnson  
Advocacy Counsel  
12<sup>th</sup> Floor, Dept. 408  
600 Boulevard Ave.  
Bismarck, ND 58505-0480

Dated this 10<sup>th</sup> day of July, 2020

Heartland Excavating, LLC

By:   
Ryan Weibye/ Owner