

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

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PUBLIC SERVICE COMMISSION,	)	
	)	
vs.	)	Case No. PU-20-98
	)	
Sun Electric, Inc.,	)	CONSENT AGREEMENT
	)	
Respondent .	)	

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**Preliminary Statement**

This Consent Agreement is entered into by and between Sun Electric, Inc. (Sun) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket No. PU-20-98.

On March 13, 2020, the Commission received a ND One-Call Complaint from Kinder Morgan (KM). The complaint alleged a violation by Sun of North Dakota Century Code (NDCC) section 49-23-04(1) by failing to provide an excavation or location notice before beginning any excavation.

On March 19, 2020, Commission staff issued a letter informing Sun of KM's complaint filing and requested a response by April 3, 2020. Sun's March 26, 2020 response agreed that Sun did not have a valid locate ticket at the time of its excavation.

On February 26, 2020 Sun personnel provided an excavation notice to the North Dakota One Call Notification Center (NDOC), with work to begin on March 2, 2020. The NDOC assigned locate ticket number 20008440 to the excavation notice, which indicates

the work was installation of electrical conduit at 3405 11<sup>th</sup> Ave SE, Watford City, ND. The expiration date for the ticket was March 23, 2020.

On February 26, 2020, Sun began an excavation as defined in NDCC section 49-23-01(7) while performing electrical conduit installation at the location cited in the excavation notice. This excavation took place prior to the work to begin date on the ticket. No damage resulted from this excavation.

NDCC section 49-23-04(1) states that except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice before beginning any excavation. An excavation begins the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice.

Having investigated the alleged violation, Staff believes that Sun violated NDCC section 49-23-04(1).

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

1. Sun violated NDCC section 49-23-04(1) by failing to provide an excavation or location notice before beginning any excavation.
2. Sun agrees to be assessed a civil penalty of \$500. Sun agrees to remit \$250 of the \$500, payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving the Consent

Agreement (Order). The remaining \$250 civil penalty is suspended on the condition that Sun commits no further violation of NDCC section 49-23 within five years of the date of the Order

3. In the event the Commission finds Sun violated the NDCC section 49-23 within five years of the date of the Order, Sun shall remit the suspended portion of the 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 NDCC section 49-23 by Sun, the remaining \$250 penalty is withdrawn.
5. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violation alleged in the Case.
6. Sun 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, Sun understands and agrees to waive all rights to contest the violation, 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, including all rights to administrative or judicial hearings or appeals.
7. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement and Order.

8. 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.

9. The undersigned is authorized to act on behalf of Sun and bind Sun for purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 21<sup>st</sup> day of June, 2021

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 16<sup>th</sup> day of June, 2021

Sun Electric, Inc.

By: Sun Electric

Name: Steve Dorsch  
Vice-President