

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
Sun Electric, Inc.  
Damage Prevention Enforcement

Case No. PU-20-98

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Geralyn R. Schmaltz** deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **15th day of July 2021** she deposited in the United States Mail at Bismarck, North Dakota, **two** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

- **Order on Consent Agreement**

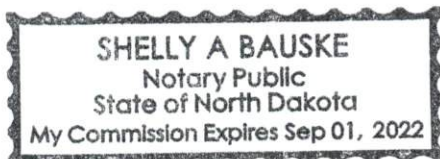
The envelopes were addressed as follows:

Steve Dosch  
Sun Electric, Inc.  
411 39<sup>th</sup> Street NW  
Fargo, ND 58102  
**Cert. No. 7020 1810 0000 0894 2301**

Ryan Farmer  
Kinder Morgan  
611 37<sup>th</sup> Ave. SE Bldg. 29  
Williston, ND 58801  
**Cert. No. 7020 1810 0000 0894 2318**

Each address shown is the respective addressee's last reasonably ascertainable post office mail address.

Subscribed and sworn to before me  
this **15th day of July 2021**.



SEAL

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Public Service Commission**  
**Sun Electric, Inc.**  
**Damage Prevention Enforcement**

**Case No. PU-20-98**

**ORDER ON CONSENT AGREEMENT**

**July 14, 2021**

**Preliminary Statement**

On March 13, 2020, the Commission received a ND One-Call Complaint (Complaint) from Kinder Morgan alleging a violation by Sun Electric, Inc (Sun Electric) of North Dakota Century Code (NDCC) chapter 49-23: One-Call Excavation Notice System.

On March 19, 2020, the Commission sent a letter to Sun Electric enclosing the March 13, 2020 Complaint, requesting a response by April 3, 2020.

On March 26, 2020, Sun Electric filed a response to the Complaint.

On July 21, 2020, Kinder Morgan filed additional information regarding the Complaint.

On June 21, 2021, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy) and Sun Electric, Inc. was filed for the resolution of the Complaint.

**Discussion**

Sun Electric, Inc. is a domestic corporation with a principal address of 411 39<sup>th</sup> St NW, Fargo, ND 58102.

On February 26, 2020, Sun Electric 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 the 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. The Complaint does not indicate any 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.

The excavation was not being made in a time of emergency under NDCC section 49-23-04(1), allowing the excavator to give notification after the start of the excavation.

Advocacy Staff concluded that Sun Electric violated NDCC section 49-23-04(1) by failing to provide an excavation or location notice before beginning any excavation.

Sun Electric and Advocacy Staff engaged in good faith settlement discussions resulting in a Consent Agreement intended to avoid further administrative proceedings or litigation.

Under the Consent Agreement, Sun Electric agrees to be assessed a civil penalty of \$500, with \$250 suspended on condition that Sun Electric commit no further violation of the North Dakota One-Call Law (North Dakota Century Code chapter 49-23) within five years of the date of an Order accepting the Consent Agreement. Sun Electric will make \$250 payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting the Consent Agreement.

Having considered this matter, the Commission finds the June 21, 2021 Consent Agreement is reasonable and acceptable. Therefore, the Commission issues the following:

### **Order**

The Commission Orders:

1. The Consent Agreement, filed on June 21, 2021, between Sun Electric, Inc. and Advocacy Staff is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. Sun Electric, Inc. is assessed a civil penalty of \$500.
3. Sun Electric, Inc. shall remit \$250 civil penalty, payable to the North Dakota Public Service Commission, within ten business days of service of this Order. The remaining \$250 civil penalty is suspended on condition that Sun Electric commit no further violation of North Dakota Century Code chapter 49-23 within five years of the date of this Order.
4. In the event the Commission finds Sun Electric violated North Dakota One-Call Law within five years of the date of this Order, Sun Electric shall remit the suspended

portion of the penalty, \$250, within the time ordered by the Commission and remit any additional fines or penalties imposed for subsequent violation.

**PUBLIC SERVICE COMMISSION**

  
\_\_\_\_\_  
**Randy Christmann**  
Commissioner

  
\_\_\_\_\_  
**Julie Fedorchak**  
Chair

  
\_\_\_\_\_  
**Brian Kroshus**  
Commissioner

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

---

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

---

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 Jan, 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: 

Vice-President