

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No. PU-20-279

ORDER ON CONSENT AGREEMENT

August 18, 2021

Preliminary Statement

On June 24, 2020, the Commission received a ND One-Call Complaint (Complaint) from Montana-Dakota Utilities Co. (MDU) alleging a violation by Magnum Electric, Inc. (Magnum Electric) of North Dakota Century Code (NDCC) chapter 49-23: One-Call Excavation Notice System.

On June 25, 2020, the Commission sent a letter to Magnum Electric enclosing the June 24, 2020 Complaint, requesting a response by July 10, 2020.

On July 27, 2021, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy Staff) and Magnum Electric, Inc. was filed for the resolution of the Complaint.

Discussion

Magnum Electric, Inc. is a foreign corporation with a principal address of 471 Christianson Dr, West Fargo, ND 58078.

On June 18, 2020, Magnum Electric began an excavation as defined in NDCC section 49-23-01(7) while performing parking lot light installation at 6002 N 19th St, Bismarck, ND. There is no evidence of Magnum Electric providing an excavation notice to the North Dakota One Call Notification Center prior to beginning this excavation. As a result of this excavation, MDU's 1.25-inch natural gas service line was damaged. MDU alleges the cost of repairs was approximately \$1200. One MDU natural gas service customer was affected by the incident.

The Complaint alleges that Magnum Electric violated NDCC section 49-23-04(1) by failing to provide an excavation or location notice before beginning any 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, Advocacy Staff believes that Magnum Electric violated NDCC section 49-23-04(1).

Magnum 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, Magnum Electric agrees to be assessed a civil penalty of \$1,500, with \$750 suspended on condition that Magnum Electric commits 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. Magnum Electric will make \$750 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 Consent Agreement is reasonable and acceptable. Therefore, the Commission issues the following:


Order

The Commission Orders:

1. The Consent Agreement between Magnum Electric, Inc. and Advocacy Staff, filed with the Commission on July 27, 2021, is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. Magnum Electric, Inc. is assessed a civil penalty of \$1,500.
3. Magnum Electric, Inc. shall remit \$750.00 civil penalty, payable to the North Dakota Public Service Commission, within ten business days of service of this Order. The remaining \$750.00 civil penalty is suspended on condition that Magnum 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 Magnum Electric violated North Dakota One-Call Law within five years of the date of this Order, Magnum Electric shall remit the

suspended portion of the penalty, \$750.00, 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

Center prior to beginning this excavation. As a result of this excavation MDU's 1.25-inch natural gas service line was damaged. MDU alleges the cost of repairs was approximately \$1200.

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 Magnum violated NDCC section 49-23-04(1).

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

1. Magnum violated NDCC section 49-23-04(1) by failing to provide an excavation or location notice before beginning any excavation.
2. Magnum agrees to be assessed a civil penalty of \$1,500. Magnum agrees to remit \$750 of the \$1,500, 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 \$750 civil penalty is suspended on the condition that Magnum 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 Magnum violated the NDCC section 49-23 within five years of the date of the Order, Magnum 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 Magnum, the remaining \$750 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. Magnum 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, Magnum 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 Magnum and bind Magnum for purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 27th day of July, 2021

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By: 

Brian Johnson
Special Assistant Attorney General Bar ID 07937
North Dakota Public Service Commission
600 East Boulevard Avenue Dept. 408
Bismarck ND, 58505
701-328-2407

Dated this 26th day of July, 2021

Magnum Electric, Inc.

By: 

Name: 