

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Xcel Energy Inc.
Damage Prevention Enforcement**

Case No. PU-20-457

ORDER ON CONSENT AGREEMENT

August 4, 2021

Preliminary Statement

On December 9, 2020, the Commission received a ND One-Call Complaint (Complaint) from the City of West Fargo alleging a violation by Xcel Energy Inc. (Xcel) of North Dakota Century Code (NDCC) chapter 49-23: One-Call Excavation Notice System.

On December 14, 2020, the Commission sent a letter to Xcel enclosing the December 9, 2020 Complaint, requesting a response by December 31, 2020.

On January 7, 2021, Xcel filed a response to the Complaint.

On July 8, 2021, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy) and Xcel Energy Inc. was filed for the resolution of the Complaint.

Discussion

Xcel Energy Inc. is a foreign corporation with a principal address of 414 Nicollet Mall, Minneapolis, MN 55401.

The Complaint alleges a violation by Xcel of North Dakota Century Code (NDCC) section 49-23-04(2) by failing to provide site identification information with its locate request.

On December 9, 2020, Xcel personnel provided an excavation notice to the North Dakota One Call Notification Center (NDOC), with work to begin on December 12, 2020. The NDOC assigned locate ticket number 20179062 to the excavation notice, which indicates the work was abandoned gas service at 9th Ave W from Sheyenne St to 2nd St W, West Fargo, ND. The expiration date for the ticket was January 2, 2021.

As alleged by West Fargo's complaint, Xcel did not provide any means of site identification as required by NDCC section 49-23-04(2). No damage resulted from this excavation.

NDCC section 49-23-04(2) provides: "Unless otherwise exempted, the ticket request must include site identification information by one or more of the following means: white marking, digital white lining, project staking, geographic information system shape file, detailed drawing, map, or other means agreed upon by the parties to the ticket. Site identification under this subsection is not required if:

- a. The precise location of excavation can be clearly and adequately identified on the location notice and is limited to a single street address or a platted lot number of record;
- b. The precise location of excavation can be clearly and adequately identified on the location notice and the excavation is an emergency excavation; or
- c. Prior to any excavation, the excavator requests and conducts a meeting with the affected operators at the location of the excavation."

Advocacy Staff concluded that Xcel violated NDCC section 49-23-04(2).

Xcel 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, Xcel agrees to be assessed a civil penalty of \$200 payable to the North Dakota Public Service Commission within ten business days of service of an Order approving 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, filed on July 8, 2021, between Xcel Energy 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. Xcel Energy Inc. is assessed a civil penalty of \$200.

3. Xcel Energy Inc. shall remit \$200 civil penalty, payable to the North Dakota Public Service Commission, within ten business days of service of this Order.

PUBLIC SERVICE COMMISSION



Randy Christmann
Commissioner



Julie Fedorchak
Chair



Brian Kroshus
Commissioner

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	
)	
vs.)	Case No. PU-20-457
)	
Xcel Energy, Inc.,)	CONSENT AGREEMENT
Respondent .)	

Preliminary Statement

This Consent Agreement is entered into by and between Xcel Energy, Inc. (Xcel) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket No. PU-20-457.

On December 9, 2020, the Commission received a ND One-Call Complaint from the City of West Fargo (West Fargo). The complaint alleged a violation by Xcel of North Dakota Century Code (NDCC) section 49-23-04(2) by failing to provide site identification information with its locate request.

On December 14, 2020, Commission staff issued a letter informing Xcel of West Fargo's complaint filing and requested a response by December 31, 2020. Xcel's January 7, 2021 response did not dispute that Xcel failed to provide site identification with its locate request.

On December 9, 2020 Xcel personnel provided and excavation notice to the North Dakota One Call Notification Center (NDOC), with work to begin on December 12, 2020.

The NDOC assigned locate ticket number 20179062 to the excavation notice, which indicates the work was abandoned gas service at 9th Ave W from Sheyenne St to 2nd St W, West Fargo, ND. The expiration date for the ticket was January 2, 2021.

As alleged by West Fargo's complaint, Xcel did not provide any means of site identification as required by NDCC section 49-23-04(2). No damage resulted from this excavation.

NDCC section 49-23-04(2) provides: "Unless otherwise exempted, the ticket request must include site identification information by one or more of the following means: white marking, digital white lining, project staking, geographic information system shape file, detailed drawing, map, or other means agreed upon by the parties to the ticket. Site identification under this subsection is not required if:

a. The precise location of excavation can be clearly and adequately identified on the location notice and is limited to a single street address or a platted lot number of record;

b. The precise location of excavation can be clearly and adequately identified on the location notice and the excavation is an emergency excavation; or

c. Prior to any excavation, the excavator requests and conducts a meeting with the affected operators at the location of the excavation."

Having investigated the alleged violation, Staff believes that Xcel violated NDCC section 49-23-04(2).

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

1. Xcel violated NDCC section 49-23-04(2) by failing to provide site identification information with its locate request.
2. Xcel agrees to be assessed a civil penalty of \$200, payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving the Consent Agreement (Order).
3. 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.
4. Xcel 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, Xcel 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.
5. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement and Order.

6. 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.
7. The undersigned is authorized to act on behalf of Xcel and bind Xcel for purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 8th 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 6th day of July, 2021

Xcel Energy, Inc.

By: _____

Christopher Akins
Name: Christopher Akins
Manager Pipeline Compliance and Standards
Xcel Energy
1123 West 3rd Avenue
Denver, CO 80223