

NDCC section 49-23-05(5) provides that to avoid damage and to minimize interference a ticket holder shall "[c]onduct the excavation in a careful and prudent manner".

NDCC section 49-23-05(3) provides that to avoid damage and to minimize interference a ticket holder shall "use reasonable efforts to maintain markings during excavation".

On September 10, 2020, KPH provided an excavation notice to the North Dakota One-Call Notification Center (NDOC). The NDOC assigned locate ticket number 20130281 to the excavation notice. The work related to the installation of a storm sewer in Oxbow, ND.

On September 11, 2020, and September 14, 2020, KPH began excavations defined in NDCC section 49-23-01(7) at the location cited in the excavation notice. The first excavation damaged a 432-count fiber cable. The subsequent excavation damaged the same cable after failing to maintain markings. The damage was estimated at \$30,387.84. The complaint did not indicate that any customer was affected, and Staff's investigation discovered that redundancy built into the system likely allowed the data to flow through an alternative path.

Having investigated the alleged violations, Staff believes that KPH violated NDCC section 49-23-05(5) and NDCC section 49-23-05(3).

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

1. KPH violated NDCC 49-23-05(5) by failing to conduct the excavations in a careful and prudent manner and NDCC 49-23-05(3) by failing to use reasonable efforts to maintain markings during excavation.
2. KPH agrees to be assessed a civil penalty of \$3,000, payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving the Consent Agreement.
3. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violations alleged in the Case.
4. KPH 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, KPH 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 Adopting this Consent Agreement, 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 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 KPH and bind KPH for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 31st day of August, 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 11th day of August, 2021

KPH, Inc.

By: _____


{insert name and title}

Eric Merhiy - President