

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
KPH, Inc.
Damage Prevention Enforcement

Case No. PU-21-177

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 **24th day of September 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**

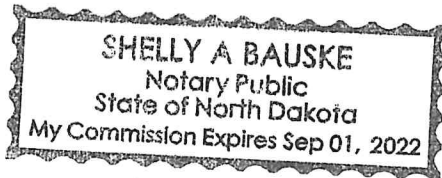
The envelopes were addressed as follows:

Eric Merhiy – President
KPH, Inc.
9530 39th Street S
Fargo, ND 58104
Cert. No. 7020 2450 0000 1344 2161

Tyler Kilde
Griggs County Telephone Co. dba MLGC
301 Dewey Street
Enderlin, ND 58027
Cert. No. 7020 2450 0000 1344 2178

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

Subscribed and sworn to before me
this **24th day of September 2021**.



Geralyn R. Schmaltz

Shelly A Bauske

Notary Public

SEAL

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
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ORDER ON CONSENT AGREEMENT

September 22, 2021

Preliminary Statement

On May 20, 2021, the Commission received a ND One-Call Complaint (Complaint) from Griggs County Telephone Co. alleging a violation by KPH, Inc. (KPH) of North Dakota Century Code (NDCC) chapter 49-23: One-Call Excavation Notice System.

On May 27, 2021, the Commission sent a letter to KPH enclosing the May 20, 2021, Complaint, requesting a response by June 10, 2021.

On June 11, 2021, KPH responded to the Complaint.

On August 31, 2021, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy Staff) and KPH was filed for the resolution of the Complaint.

Discussion

KPH, Inc. is a domestic corporation with a principal address of 9530 39th St S, Fargo, ND 58104-7824.

On September 10, 2020, KPH provided an excavation notice to the North Dakota One Call Notification Center (NDOC), with work to begin on September 15, 2020. 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, and September 14, 2020, KPH began an excavation as defined in NDCC section 49-23-01(7) while performing storm and sewer line installation at Oxbow, ND. The first excavation damaged a 432-count fiber telecommunications cable. The subsequent excavation damaged the same cable after failing to maintain markings. The damage was estimated at \$30,387.84. The customers affected is unknown.

The Complaint alleges that KPH violated NDCC section 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.

NDCC section 49-23-05(5) provides that to avoid damage and to minimize interference a ticket holder shall "Conduct 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.

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

KPH 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, KPH agrees to be assessed a civil penalty of \$3000, 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 KPH and Advocacy Staff filed with the Commission on August 31, 2021, is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. KPH is assessed a civil penalty of \$3000.
3. KPH shall remit \$3000.00 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

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