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DAVENPORT, EVANS, HURWITZ & SMITH, LLP

206 WEST 14TH STREET • P.O. BOX 1030 • SIOUX FALLS, SOUTH DAKOTA 57101-0300
T: (605) 336-2880 • F: (605) 335-3639 • WWW.DEHS.COM

OCT 21 2022

October 20, 2022

NORTH DAKOTA
PUBLIC SERVICE COMMISSION

ASHLEY R. BROST
Direct Dial: 605-357-1292
E-mail: abrost@dehs.com

Executive Secretary – *sent via FedEx*
North Dakota Public Service Commission
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

Re: North Dakota One-Call Excavation Notice System – Case Number DM 22-354

Greetings:

Our law firm represents Midcontinent Communications (“Midco”) in the above-referenced matter. This letter is written in response to the North Dakota One-Call Complaint submitted by Industrial Builders, Inc. and Brian Meyer (collectively, “Industrial Builders”) against Midco, dated August 31, 2022 (“One-Call Complaint”).

Upon information and belief, on or around July 16, 2022, Industrial Builders began an excavation project near 120 3rd Avenue, Richardton, North Dakota, in which it worked to mill and overlay cement on an existing asphalt street. Midco was unaware of this project as Industrial Builders did not provide notice of the project via a One-Call locate ticket number (“Locate”). Rather, Midco only became aware of the project because one of its customers contacted Midco to notify it that the customer did not have any working services. Midco ultimately discovered that one its lines had been damaged during Industrial Builders’ excavation.

Midco repaired the damaged line for a total cost of \$3,171.93 and sent Industrial Builders a bill for the same. On or around August 16, 2022, a Midco employee received a phone call from Industrial Builders inquiring about the bill. The next day, Midco employee, Eric Wilson, called Industrial Builders and spoke with Mr. Meyer. Mr. Wilson informed Mr. Meyer that Midco billed Industrial Builders for damaging its line because Industrial Builders had not provided Midco with a Locate. Mr. Meyer responded that Industrial Builders was excluded from having to provide a Locate because it did not excavate more than twelve inches below the ground’s surface. Mr. Wilson stated that if Industrial Builders could provide Midco with authority supporting its position, Midco would cancel its bill. Mr. Meyer never followed up with Midco.

On or around August 31, 2022, Midco received a voice message from Don Dedrick, stating that he was the contractor for Industrial Builders that hit Midco’s line and that he was not going to pay for Midco’s bill. This voice message was forwarded to Mr. Wilson, who attempted to return Mr. Dedrick’s phone call. Unable to reach Mr. Dedrick, Mr. Wilson left him a voice

message, leaving his contact information and reiterating that the reason for Midco's bill was because Industrial Builders did not provide Midco with a Locate; however, if Industrial Builders could provide Midco with authority indicating Industrial Builders is excluded from having to provide a Locate, Midco will cancel its bill. Mr. Dedrick never returned Mr. Wilson's phone call.

Thereafter, Midco further investigated the damage caused to its line. Midco ultimately determined that based on the depth of Industrial Builders' excavation, as well as the depth of its line, Midco would cancel its bill. Industrial Builders never paid Midco for the damaged line, and Midco did not take any further action to pursue payment from Industrial Builders as related to the damaged line.

Nonetheless, on October 4, 2022, Midco received notice of the One-Call Complaint, and Industrial Builders' assertion that it has been damaged in the amount of \$3,171.93 — the precise amount of the Midco bill. It is unclear how Industrial Builders is supporting its damages claim as Industrial Builders never paid Midco for damaging its line and is no longer required to pay Midco as Midco has cancelled its bill. Indeed, Midco is actually the damaged party in this matter, but Midco has opted not to seek reimbursement from Industrial Builders for damaging its line.

Industrial Builders' claim for damages is unfounded and/or moot under the circumstances. Accordingly, Midco respectfully requests the One-Call Complaint against it be dismissed.

Please do not hesitate to contact me if I can provide any further information or assistance.

Sincerely,



ASHLEY R. BROST (ND #09027)

For the Firm

ARB/rl