

Public Service Commission

State of North Dakota

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June 19, 2023

Mr. Steve Kahl
Executive Secretary
North Dakota Public Service Commission
600 E Boulevard Ave Dept 408
Bismarck ND 58505-0480

via Hand Delivery

Re: Case No. DM-22-425
Public Service Commission
MP Technologies, LLC
Damage Prevention Enforcement

Dear Mr. Kahl:

Enclosed is a copy of the Consent Agreement to be filed in the above captioned case.

Best regards,

A handwritten signature in blue ink, appearing to read "BJ", with a long horizontal flourish extending to the right.

Brian Johnson
Legal Counsel

Enclosure

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

Public Service Commission
MP Technologies, LLC
Damage Prevention Enforcement

Case No. DM-22-425

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	
)	
vs.)	CONSENT AGREEMENT
)	
)	
MP Technologies, LLC)	
)	
Respondent.)	

This Consent Agreement is entered into by and between MP Technologies, LLC (MP Tech.) and the Public Service Commission (Commission) Advocacy Staff (Staff) (together, the Parties) for resolution of Case No. DM-22-425.

Preliminary Statement

On December 19, 2022, the Commission received a North Dakota One-Call Complaint (Complaint) from Summit Utility Services, LLC. The Complaint alleges MP Tech. violated North Dakota Century Code (N.D.C.C.) §§ 49-23-04(7) and 49-23-05(3) of the One-Call Excavation Notice System by misuse of the emergency excavation notice and for failing to use reasonable efforts to maintain markings.

On February 23, 2023, Staff sent a letter to MP Tech. enclosing the December 19, 2022, Complaint, requesting a response by March 14, 2023.

On March 24, 2023, due to a lack of response from MP Tech., Staff followed up on the February 23, 2023, letter by email.

On March 27, 2023, Staff received a response from MP Tech. acknowledging that an emergency excavation notice was placed on December 19, 2023 due to a “no heat” situation in the middle of December.”

Discussion

On November 9, 2022, MP Tech. provided two excavation notices to the North Dakota One-Call Notification Center (NDOC) with a work to begin date of November 15, 2022. While both excavation notices provided an identical location of work, each notice was for a different unit of a newly constructed unoccupied twin home located at 18 8th Avenue North, Fargo, North Dakota (Twin Home). NDOC assigned ticket numbers 22152953 for Unit B and 22152954 for Unit A to the excavation notices and each notice indicated the type of work to be performed was “placing gas service and main.” This work was being performed by MP Tech. on behalf of Xcel Energy (Xcel).

On November 30, 2022, MP Tech. extended ticket number 22152954 for Unit A which NDOC reassigned as ticket number 22157211.

On December 2, 2022, MP Tech. extended ticket number 22152953 for Unit B which NDOC reassigned as ticket number 22157680.

On December 19, 2022, at 9:30 AM, MP Tech. provided an excavation notice to NDOC with a work to begin date of December 22, 2022, at the Twin Home. NDOC assigned ticket number 22159422 which indicated the type of work to be performed was “placing gas service and main.”

On December 19, 2022, at 10:54 AM, MP Tech. provided an emergency excavation notice to NDOC with a work to begin date of December 19, 2022 at 11:00 AM, at the Twin Home. NDOC assigned emergency ticket number 22159444 which indicated the type of work to be performed was “placing gas service and main” and stated, “emergency crew onsite.”

Alleged Violation 1 – Misuse of the Emergency Excavation Notice

N.D.C.C. § 49-23-04(7) states if an excavation is being made in a time of emergency, all reasonable precautions must be taken to protect the underground facilities. In an emergency, the excavator shall give notification in compliance with this chapter, as soon as practical, that an emergency exists. As soon as practical, each operator shall provide all location information that is reasonably available to the excavator.

N.D.C.C. § 49-23-01(5) defines an emergency as a sudden, unexpected occurrence, involving a clear and imminent danger, and demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.

In conversations with MP Tech., Staff acknowledges there were extenuating circumstances and weather-related challenges; however, Staff believes this situation does not meet the statutory definition of an “emergency”. First, this situation was not a sudden, unexpected occurrence, involving a clear and imminent danger, and second, this situation did not demand immediate action. This was a newly constructed, unoccupied Twin Home that previously had no gas service and was being provided initial gas service by MP Tech. Additionally, excavation notices were submitted to NDOC as early as

November 9, 2022, a clear indication this project was underway for over a month. Therefore, MP Tech. violated N.D.C.C. § 49-23-04(7) by providing an emergency excavation notice when a statutorily defined emergency did not exist.

Alleged Violation 2 – Failure to Maintain Markings

N.D.C.C. § 49-23-05(3) requires a ticket holder to use reasonable efforts to maintain markings during excavation.

During November and December 2022, the Fargo, North Dakota area experienced winter storms that would not have produced a conducive environment to maintain markings using reasonable efforts. Therefore, MP Tech. is not in violation of N.D.C.C. § 49-23-05(3) for failure to maintain markings.

Agreement

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

1. MP Tech. violated N.D.C.C. § 49-23-04(7) by providing an emergency excavation notice when a statutorily defined emergency did not exist.
2. MP Tech. agrees to be assessed a civil penalty of \$1,000
3. MP Tech. agrees to remit \$500 of the \$1,000, payable to the North Dakota Public Service Commission within ten (10) business days of service of an Order accepting or approving the Consent Agreement. The remaining \$500 civil penalty

- is suspended on the condition that MP Tech. commits no further violation of N.D.C.C. Chapter 49-23 within five (5) years of the date of the Order.
4. In the event the Commission finds MP Tech. violated N.D.C.C. Chapter 49-23 within five (5) years of the date of the Order, MP Tech. 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.
 5. If within five (5) years of the date of the Order there is no subsequent violation of N.D.C.C. Chapter 49-23 by MP Tech., the remaining \$500 penalty is withdrawn.
 6. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violations alleged in this case.
 7. MP Tech. consents to the filing of the Consent Agreement and an Order and hereby waives any further procedural requirements with respect to the issuance of the Order. Provided the Commission adopts this Consent Agreement and issues an Order consistent with it, MP Tech. 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.
 8. For purposes of the identification requirement of Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), the performance is restitution, remediation, or an amount paid to come into compliance with the law. Accordingly, MP Tech. agrees to provide the Commission with a U.S. Department of the Treasury Internal Revenue

Service Form W-9 for this purpose within ten (10) business days of service of an Order accepting or approving the Consent Agreement.

9. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement and Order.
10. 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.
11. The undersigned is authorized to act on behalf of MP Tech. and bind MP Tech. for the purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 19th day of June, 2023


PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By: 

Brian Johnson
Special Assistant Attorney (General Bar ID 07937)
Public Service Commission
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480
701-328-2407

Dated this 14 day of June, 2023

MP Technologies, LLC

By: 

Michael Aydt, Chief Financial Officer