



Public Service Commission

State of North Dakota

COMMISSIONERS

Randy Christmann
Sheri Haugen-Hoffart
Julie Fedorchak

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

November 1, 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-23-241
Public Service Commission
Montana-Dakota Utilities Co.
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 "Brian Johnson".

Brian Johnson
Legal Counsel

Enclosure

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

**Public Service Commission
Montana-Dakota Utilities Co.
Damage Prevention Enforcement**

Case No. DM-23-241

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	
)	
vs.)	CONSENT AGREEMENT
)	
)	
Montana-Dakota Utilities Co.)	
)	
Respondent.)	

This Consent Agreement is entered into by and between Montana-Dakota Utilities Co. (MDU) and the Public Service Commission (Commission) Advocacy Staff (Staff) (together, the Parties) for resolution of Case No. DM-23-241.

Preliminary Statement

On June 26, 2023, the Commission received a North Dakota One-Call Complaint (Complaint) from Burlington Construction, LLC (Burlington). The Complaint alleges MDU violated North Dakota Century Code (N.D.C.C.) § 49-23-04(6)(a) of the One-Call Excavation Notice System by failing to locate and mark or otherwise provide the approximate horizontal location of the underground facilities within the location period. Additionally, Burlington stated their request for compensation for lost time due to Burlington having to reach out to MDU to confirm the area was clear prior to commencing excavation while having a crew onsite was denied by MDU.

On July 25, 2023, Staff sent a letter to MDU enclosing the June 26, 2023, Complaint and requested a response by August 18, 2023.

On August 16, 2023, Staff received a response from MDU providing information that MDU fulfilled the locate request; however, due to a new integration of one-call ticket management software, MDU was experiencing sporadic issues transmitting a positive response to the North Dakota One-Call Notification Center.

Discussion

On June 9, 2023, Burlington provided an excavation notice to the North Dakota One-Call Notification Center (NDOC), with a work to begin date of June 14, 2023. NDOC assigned locate ticket number 23051703 to the excavation notice which identified the address as 400 2nd Street East, Carpio, North Dakota and the type of work to be performed as “repair sewer/waterlines.”

On June 13, 2023, an MDU service technician was dispatched and determined the area was clear for excavation and marked the area clear in MDU’s one-call system. However, due to the previously stated issue, MDU’s one-call system did not transmit a positive response to NDOC and mark the area clear/no conflict on the one-call ticket.

On June 15, 2023, Burlington had a crew waiting to commence excavation. Burlington reached out to Shane Homiston, MDU Williston District Manager, to inquire regarding the locate status of one-call ticket number 23051703. Mr. Homiston informed Burlington the status of the locate request was “clear/no conflict”. MDU then began investigating why a positive response was not sent to NDOC.

On June 16, 2023, MDU discovered positive response was disconnected for the NDOC MDU06 district/registration code, which encompasses the Carpio, North Dakota

area and a manual response was immediately submitted as “clear/no conflict” to NDOC. MDU believes their one-call program issue has been corrected and should function as intended in the future.

Alleged Violation 1:

Operator Failed to Mark or Clear Underground Facility within the Locate Period

N.D.C.C. § 49-23-04(6)(a) states “An operator with underground facilities within the area of a location request shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator within the location period or as agreed by the parties.”

Additionally, N.D.C.C. § 49-23-04(6)(n) states “An operator that has completed marking of the excavation area or has determined there are no facilities in the area identified in the ticket shall provide positive response to the notification center in compliance with the notification center's procedures established under subsection 5 for assuring positive response from operators.”

Furthermore, N.D.C.C. § 49-23-01(16) states “‘Positive response’ means notification by the operator to the notification center that underground facilities within the area covered by a location request have been marked or cleared.”

Having investigated the alleged violation, Staff believes MDU did not violate N.D.C.C. § 49-23-04(6)(a). However, Staff believes MDU violated N.D.C.C. § 49-23-04(6)(n) for failing to provide a positive response to NDOC for one-call ticket number 23051703.

Alleged Violation 2:

Operator Failed to Compensate Excavator for Lost Time

N.D.C.C. Chapter 49-23, One-Call Excavation Notice System, does not reference or provide guidelines for compensation for lost time. Furthermore, the Commission is not a court and does not award damages.

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:

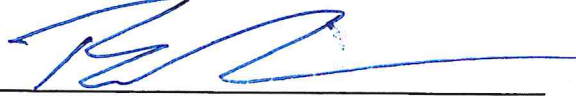
1. MDU violated N.D.C.C. § 49-23-04(6)(n) for failing to provide a positive response to NDOC for one-call ticket number 23051703.
2. MDU agrees to be assessed a civil penalty of \$300.
3. MDU agrees to remit the \$300, payable to the North Dakota Public Service Commission, within ten (10) business days of service of an Order accepting or approving the Consent Agreement.
4. 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.
5. MDU 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, MDU 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.

6. 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, MDU 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.
7. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement and Order.
8. This agreement may be executed in counterparts and duplicate copies, each of which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.
9. The undersigned is authorized to act on behalf of MDU and bind MDU for the purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 1st day of November, 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 1st day of November, 2023

Montana-Dakota Utilities Co.

By: 

Travis Jacobson, Director of Regulatory Affairs