

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Northern States Power Company
Damage Prevention Enforcement**

Case No. DM-24-164

ORDER ON CONSENT AGREEMENT

October 9, 2024

Preliminary Statement

On April 16, 2024, the Commission received a North Dakota One-Call Complaint (Complaint) from the Public Service Commission's Gas Pipeline Safety Program Manager alleging a violation by Northern States Power Company dba Xcel Energy (Xcel) of North Dakota Century Code (N.D.C.C.) § 49-23-04(6)(b) for failing to mark their facility within 24 inches horizontally.

On April 23, 2024, Staff sent a letter to Xcel enclosing the April 16, 2024, Complaint and requested a response by May 17, 2024.

On May 15, 2024, Staff authorized a one-week extension to the response deadline at Xcel's request.

On May 24, 2024, Staff received a response from Xcel.

On September 30, 2024, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy Staff) and Xcel was filed for the resolution of the Complaint.

Discussion

Xcel Energy is a trade name owned by Northern States Power Company. Northern States Power Company is a foreign corporation with the principal address of 414 Nicollet Mall, Minneapolis, Minnesota 55401-1927.

On October 18, 2022, a directional boring company, Optical Xperts, LLC (Optical), provided an excavation notice to the North Dakota One-Call Notification Center (NDOC) to install fiber optic at 8201 Memory Lane, Horace, North Dakota. NDOC assigned ticket number 22141215 with a work to begin date of October 21, 2022.

On October 20, 2022, Xcel marked their facilities at 11:53 a.m. according to the status history of ticket number 22141215.

On October 24, 2022, Optical struck an unmarked four-inch polyethylene gas main causing an outage to 270 customers in Horace, North Dakota and \$53,170.40 in damages. Xcel responded by shutting the gas off and making the necessary repairs to restore service. The Program Manager also responded to investigate the incident.

The investigation determined the locate technician, employed by Xcel's contracted locating service, Olameter, marked some, but not all of Xcel's facilities. This section of four-inch gas main was not marked when the technician was locating for ticket number 22141215. According to Xcel, "[a]fter the 2022 damage, the locate technician was disqualified and provided additional training. After additional audits were conducted on the locate technician involved with this damage, the technician subsequently resigned from Olameter."

According to Xcel, the following steps have been taken as a response to this event: (1) improve locator training and oversight by adding additional staff, (2) increasing the number of field audits conducted on locate technicians, (3) improve employee retention, and (4) utilize this incident as a training tool. Additionally, Xcel holds monthly meetings with Olameter's leadership to review locate performance.

Conclusion

Having investigated the alleged violation, Staff believes Xcel violated N.D.C.C. § 49-23-04(6)(b) by failing to mark their facility within 24 inches horizontally.

Xcel 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, Xcel agrees to be assessed a civil penalty of \$7,000. Xcel agrees to remit \$7,000 payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving 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 Xcel and Advocacy Staff filed with the Commission on September 30, 2024, is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. Xcel is assessed a civil penalty of \$7,000.

3. Xcel shall remit the \$7,000 civil penalty, payable to the North Dakota Public Service Commission, within ten business days of service of this Order.

4. For identification 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. Xcel shall provide the Commission with a U.S. Department of the Treasury Internal Revenue Service Form W-9 for the purpose of the identification requirement of 26 U.S.C. § 162(f)(2)(A)(ii) within ten business days of service of this Order.

PUBLIC SERVICE COMMISSION


Sheri Haugen-Hoffart
Commissioner


Randy Christmann
Chair


Julie Fedorchak
Commissioner

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

Public Service Commission
Northern States Power Company
Damage Prevention Enforcement

Case No. DM-24-164

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	
)	
vs.)	CONSENT AGREEMENT
)	
Northern States Power Company)	
)	
Respondent.)	

This Consent Agreement is entered into by and between Northern States Power Company dba Xcel Energy (Xcel) and the Public Service Commission (Commission) Advocacy Staff (Staff) (together, the Parties) for resolution of Case No. DM-24-164.

Preliminary Statement

On April 16, 2024, the Commission received a North Dakota One-Call Complaint (Complaint) from the Commission's Gas Pipeline Safety Program Manager (Program Manager). The Complaint alleges Xcel violated North Dakota Century Code (N.D.C.C.) § 49-23-04(6)(b) of the One-Call Excavation Notice System by failing to mark their facility within 24 inches horizontally.

On April 23, 2024, Staff sent a letter to Xcel enclosing the April 16, 2024, Complaint and requested a response by May 17, 2024.

On May 15, 2024, Staff authorized a one-week extension to the response deadline at Xcel's request.

On May 24, 2024, Staff received a response from Xcel acknowledging that Xcel's contracted locating service, Olameter, failed to locate a four-inch polyethylene gas main. The response also provided details on what corrective actions both Xcel and Olameter have taken in response to this incident.

Discussion

On October 18, 2022, a directional boring company, Optical Xperts, LLC (Optical), provided an excavation notice to the North Dakota One-Call Notification Center (NDOC) to install fiber optic at 8201 Memory Lane, Horace, North Dakota. NDOC assigned ticket number 22141215 with a work to begin date of October 21, 2022.

On October 20, 2022, Xcel marked their facilities at 11:53 am according to the status history of ticket number 22141215.

On October 24, 2022, Optical struck Xcel's four-inch polyethylene gas main causing an outage to 270 customers in Horace North Dakota and \$53,170.40 in damages. Xcel responded by shutting the gas off and making the necessary repairs to restore service. The Program Manager also responded to investigate the incident.

The investigation determined that the locate technician failed to locate the four-inch gas main when locating ticket number 22141215. According to Xcel, "[a]fter the 2022 damage, the locate technician was disqualified and provided additional training. After additional audits were conducted on the locate technician involved with this damage, the technician subsequently resigned from Olameter." It was determined during the audits that the locate technician failed to locate a gas line on a separate ticket.

According to Xcel, the following steps have been taken as a response to this event: (1) improve locator training and oversight by adding additional staff, (2) increasing the number of field audits conducted on locate technicians, (3) improve employee retention, and (4) utilize this incident as a training tool. Additionally, Xcel holds monthly meetings with Olameter's leadership to review locate performance.

Alleged Violation:

Operator Failed to Mark Facility Within 24 Inches Horizontally

N.D.C.C. § 49-23-04(6)(a) states in part that “[a]n 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.”

N.D.C.C. § 49-23-04(6)(b) states in part that “the approximate horizontal location of the underground facilities is a strip of land two feet [60.96 centimeters] on either side of the underground facilities.”

Having investigated the alleged violation, Staff believes Xcel violated N.D.C.C. § 49-23-04(6)(b) by failing to mark their facility within 24 inches horizontally.

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. Xcel violated N.D.C.C. § 49-23-04(6)(b) by failing to mark their facility within 24 inches horizontally.

2. Xcel agrees to be assessed a civil penalty of \$7,000.
3. Xcel agrees to remit \$7,000, payable to the North Dakota Public Service Commission within ten (10) business days of service of an Order accepting or approving the Consent Agreement.
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. Xcel 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, Xcel 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, Xcel 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 Xcel and bind Xcel for the purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 30th day of September, 2024

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 13 day of September, 2024

Xcel Energy

By:  _____

Alicia Berger
Regional Vice President, Gas Operations