

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE COMPLAINT FILED)	FINAL ORDER AND
BY JOHN BYRE, SIOUX FALLS, SD, AGAINST)	DECISION; NOTICE OF
NORTHERN STATES POWER COMPANY)	ENTRY OF ORDER
REGARDING A BILL)	EL97-008

On April 17, 1997, the South Dakota Public Utilities Commission (Commission) received a complaint from John Byre, Sioux Falls, SD, against Northern States Power Company (NSP) regarding a bill. Mr. Byre stated that he feels he is being unfairly charged for moving a cable that was installed incorrectly by NSP. Mr. Byre further stated that the drawings and work order are specific about where the cable was to be placed, and that NSP changed the route because of a dirt pile. Because the original contract states that the owner must clear the route before NSP begins underground installation, Mr. Byre alleged that NSP's reason for changing the route is invalid. Mr. Byre has requested the Commission to cancel the bill and hold NSP responsible for their actions.

At its regularly scheduled July 15, 1997, meeting, the Commission found probable cause of an unlawful or unreasonable act, rate, practice, or omission and served the complaint on NSP. NSP filed its response on August 15, 1997.

Pursuant to its Order for and Notice of Hearing dated September 18, 1997, a hearing was held on September 29, 1997, at the Days Inn Empire, 3401 Gateway Boulevard, Sioux Falls, South Dakota. At the end of the hearing, the Commission took the matter under advisement.

At its November 18, 1997, meeting, the Commission considered the matter. The Commission voted to find that Mr. Byre is responsible for the costs of moving the cable in the amount of \$653.53 because the construction of his building necessitated the moving of the cable.

Based on the evidence and testimony of record, the Commission makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

I

On April 17, 1997, the Commission received a complaint from John Byre, Sioux Falls, SD, against NSP regarding a bill. Exhibit 1.

II

Mr. Byre constructed an apartment house at 2701 Brookshire Place, Sioux Falls, South Dakota. Tr. at 5. Mr. Byre did not call the One-Call Notification System before beginning construction. Tr. at 6. During the construction, a NSP cable was exposed. Id. Mr. Byre objected to paying for the relocation of the cable because the original site plan purporting to show where the cable was located was incorrect. Id.; Exhibit 1.

III

The cable was located on the corner of the footings of the apartment building. Tr. at 10. Although a representative of NSP, Jim Wilcox, testified that the cable was cut, no evidence was presented to show that a cable cut in fact occurred. Tr. at 48.

IV

After the cable was exposed on January 8, 1996, the cable was de-energized. Affidavit of Chuck Wiese. NSP and Mr. Byre then discussed moving the cable. Tr. at 50. They were unable to come to an agreement. Id. In April, NSP fixed and relocated the cable. Id. The cost of relocating the cable was \$653.53. Affidavit of Jim Wilcox.

V

The cable in question involved a looped lateral. Affidavit of Chuck Meyer. The looping of underground circuits improves reliability because damage to the underground facility can be isolated and the power re-routed to quickly restore service. Id.

VI

Mr. Bill Kullander, a NSP employee, testified that the original site plan that Mr. Byre had relied on was incorrect. Tr. at 27-28. When the original cable was placed, the location of the cable had to be changed from the original site plan due to an obstruction. Tr. at 26-27. Raymond Bennett, the owner of the property at the time, authorized the change in location. Tr. at 27-28.

VII

The Commission finds that the cable had to be moved due to the construction of Mr. Byre's apartment house. Although the original site plan was incorrect, that plan was changed with the authorization of the original owner. Further, Mr. Byre should have called the One Call Notification System before beginning construction instead of attempting to rely on a site plan. Since the cable was moved due to Mr. Byre's construction, Mr. Byre is responsible for paying the relocation costs.

CONCLUSIONS OF LAW

I

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-34A, and ARSD 20:10:01:15 and 20:10:18:02.

II

The Commission finds that Mr. Byre is responsible for paying for the relocation of the cable. The construction of his apartment building necessitated the cable's relocation and thus he is responsible for paying the costs of that relocation in the amount of \$653.53. See ARSD 20:10:18:02. Although Mr. Byre did not specifically request the relocation of the cable, a customer whose actions necessitate the relocation of a cable is responsible for paying for that relocation.

It is therefore

ORDERED that Mr. Byre is responsible for paying the costs of the cable relocation in the amount of \$653.53.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 2nd day of December, 1997. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 2nd day of December, 1997.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Alvin Kalbo</u>
Date:	<u>12/4/97</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

