

PUBLIC SERVICE COMMISSION OF WISCONSIN

Investigation of the Complaint of Alliant Energy against DeMars Plumbing, Referred to the Commission Pursuant to Wis. Stat. § 182.0175(3)(br)2.

9300-PLI-103

CONSENT AGREEMENT

The Wisconsin one-call system (Diggers Hotline), through its Wis. Stat. § 182.0175(1m)(d)8., panel and in accordance with Wis. Stat. § 182.0175(3)(br)2., referred a natural gas complaint (Complaint), initiated by Alliant Energy (Complainant) against DeMars Plumbing, Inc. (Respondent), to the Public Service Commission of Wisconsin (Commission). The complaint alleges violations of Wis. Stat. § 182.0175(2)(am)1. The Respondent wishes to resolve this complaint by consent agreement pursuant to Wis. Stat. § 182.0175(3)(c)2. and avoid further proceedings and litigation, and therefore enter into this Consent Agreement.

I. BACKGROUND

1. On July 10, 2019, Diggers Hotline referred the Complaint to the Commission. The Complaint alleges that the Respondent, a plumbing company installing sewer and water service, damaged the Complainant's 1-inch plastic natural gas service line at S235 Stand Rock Road, Wisconsin Dells, Wisconsin.
2. The Respondent was digging in close proximity to the Complainant's service line with a backhoe and struck the line, severing it and affecting gas service to one customer.
3. The Respondent did not notify Diggers Hotline prior to excavation. The Respondent did not contact Complainant's locating services to investigate the damage after the fact.

4. The Complaint referral includes an attachment of the Complainant's line-hit investigation report detailing the damage event, root cause naming the Respondent, description of repairs and other charges incurred in response to the damage, and an attachment of Vanguard Utility Partners, Inc. Damage Investigation Form describing the cause and liability.
5. The Complaint also include a response of the Respondent acknowledging its failure to contact Diggers Hotline and acknowledging its responsibility to have done so.
6. The Complaint alleges that the Respondent violated Wis. Stat. § 182.0175(2)(am)1. By failing to notify the one-call system at least 3 days prior to beginning excavation activities near the Complainant's service line.

II. JURISDICTION

7. Pursuant to Wis. Stat. § 182.0175(3)(c), the Commission has jurisdiction over the Complaint and the Respondent.
8. Pursuant to Wis. Stat. § 182.0175(3)(c)2., the Commission has the authority to dismiss a complaint referred by the panel by joint execution of a consent agreement with the Respondent. A consent agreement may assess against the Respondent a forfeiture, require the respondent to attend the educational course under Wis. Stat. § 182.0175(3)(br)4., or do both. A consent agreement shall become effective when the commission issues an order approving the consent agreement.
9. The Respondent consents to and shall not challenge the terms of this Consent Agreement or the Commission's jurisdiction to enter and enforce this Consent Agreement.

III. PARTIES BOUND

10. This Consent Agreement is binding upon the Respondent and its successors and assigns.

Any change in ownership or corporate or other legal status of the Respondent, including but not limited to, any transfer of assets or real or personal property shall in no way alter the Respondent's responsibilities under this Consent Agreement.

IV. ADMISSION OF JURISDICTIONAL FACTS

11. The Respondent admits the following facts as true:

- a. On or about April 16, 2019, at 235 Stand Rock Rd., Wisconsin Dells, Wisconsin 53965, the Respondent was a person engaged in excavation and therefore was an "excavator" as that term is defined in Wis. Stat. § 182.0175(1)(bm);
- b. That Respondent used a backhoe to conduct excavation, and while conducting such excavation Respondent damaged a 1-inch plastic underground natural gas line owned by Alliant Energy, and that such damage caused a disruption in service and required repairs;
- c. That Respondent did not provide notice to the one-call system prior to performing nonemergency excavation work as required under Wis. Stat. § 182.0175(2)(am), and that no valid locate ticket existed for the work;
- d. That Respondent knew or should have known the actions described were in violation of the requirements of Wis. Stat. § 182.0175, and agrees that such actions constitute a violation those requirements.

V. WAIVER

12. The Respondent agrees that by executing this Consent Agreement, and upon the Commission's issuance of an order approving this Consent Agreement, the Respondent expressly waives any further procedural steps and of the right to seek judicial review or otherwise challenge or contest the validity of this Consent Agreement or the Commission's order approving this Consent Agreement as provided in Wis. Stat. § 182.0175 or as may otherwise be provided under Wisconsin law.

VI. STATEMENT OF REQUIRED ACTIONS

A. PAYMENTS

13. The Respondent agrees and understands that under Wis. Stat. § 182.0175(3)(d)1., the Commission may directly assess a forfeiture of no more than \$25,000 for each violation of this section; that each day of a continued violation constitutes a separate violation; that no person may be required by the Commission to forfeit an amount exceeding \$500,000 for a single persisting violation; that no other forfeiture may be imposed for violating Wis. Stat. § 182.0175; and that if the Commission finds that assessing a forfeiture is appropriate, then the Commission must also require the Respondent to pay a surcharge equal to 10 percent of the amount of the forfeiture to the One-Call System. Accordingly, the Commission finds, and the Respondent agrees, that the Respondent will take the following actions within the stated timeframes:

- a. Within 45 days of the effective date of the Order approving the Consent Agreement, the Respondent shall pay a \$500 forfeiture to the Commission in the form of a check made payable to the Public Service Commission of Wisconsin

and delivered to the Commission's office to the attention of the Commission Secretary;

- b. Within 45 days of the effective date of the Order approving the Consent Agreement, the Respondent shall pay a \$50 surcharge to Diggers Hotline in the form of a check made payable to Diggers Hotline, Inc. or its appropriate corporate entity; and that Respondent shall file notice of proof of payment of this surcharge in this docket using the Commission's Electronic Records Filing (ERF) system;

B. OTHER ACTIONS

14. Within 45 days of the effective date of the Order approving this Consent Agreement, the Respondent shall make arrangements with the Wisconsin One-Call System, including paying any fees, to attend the educational course under Wis. Stat. § 182.0175(3)(br)4, and the Respondent shall file proof of attendance at the educational course using the Commission's Electronic Records Filing (ERF) system.

VII. RESPONDENT'S FAILURE TO TAKE REQUIRED ACTIONS

15. If the Respondent fails to make full payment within the time periods required by Paragraph 13.a., the Respondent shall pay interest on the unpaid balance.
16. The Respondent fails to make fully payment as required by Paragraphs 13.a. and 13.b. or take the other actions required by Paragraph 14, the Commission may, in addition to any other available remedies or sanctions, refer the matter for collection, bring an action against the Respondent seeking injunctive relief to compel payment, and/ or seek additional forfeitures under Wis. Stat. § 196.66. The Respondent shall be liable for any

collection or other costs incurred by the Commission arising from the Respondent's to take the actions required by this Consent Agreement.

VIII. EFFECT OF CONSENT AGREEMENT

17. Nothing in this Consent Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Agreement.

IX. NOTICES AND SUBMISSIONS

18. Whenever under the terms of this Consent Agreement, written notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses and in a the manner specified below unless those individuals or their successors give notice of a change to the other party in writing.

To the Commission

Mail Payment to:

Secretary to the Commission
Public Service Commission
P.O. Box 7854
Madison, Wisconsin 53707-7854

Provide other written notifications to the Commission via the Commission's Electronic Records Filing (ERF) System using the Commission's E-Services Portal and in docket 9300-PLI-103.

To file such a notifications, go to the Commission's E-Services Portal at <http://apps.psc.wi.gov>, click on the "ERF Upload Documents" link on the left side menu bar. On the next page, log on if you are a registered ERF user, create a new account if you do not have an existing account, or contact PSC Records Management staff at (608) 261-8521 or via e-mail at PSCRecordsMail@wisconsin.gov for assistance.

To the Respondent

Steven DeMars
DeMars Plumbing, Inc.
S8441 Denzer Road
North Freedom, WI 53951

X. MODIFICATION

20. The terms of this Consent Agreement may be modified only by a subsequent written agreement signed by the Commission and the Respondent. Any modification of this Agreement may be made only by an order of the Commission as provided in Wis. Stat. § 196.39.

XI. RETENTION OF JURISDICTION

21. The Commission shall retain jurisdiction over this matter for purposes of interpreting and enforcing the terms of this Consent Agreement.

XII. SIGNATORIES

22. The undersigned representatives each certify that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind such party to this document. This Consent Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

XIII. EFFECTIVE DATE

23. The effective date of this Consent Agreement shall be the date upon which the Commission issues and serves its Order approving it.

XIV. ENTIRE AGREEMENT

24. This Consent Agreement contains the entire agreement between the Commission and Respondent with respect to the subjects addressed herein and supersedes all prior agreements and understandings, express or implied. In entering into this Consent

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Agreement, the Respondent is not relying on any representation or consideration not expressed herein.

Dated at Madison, Wisconsin, _____

By the Commission:

Steffany Powell Coker
Secretary to the Commission

Dated: _____

By DeMars Plumbing, Inc.

Print Name: _____

CS:DL:01724618

DRAFT