

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Lakeside Construction – Richard Strand Owner
Damage Prevention Enforcement**

Case No. PU-10-633

RECEIVED

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CONSENT ORDER

July 13, 2011

PUBLIC SERVICE COMMISSION

The North Dakota Public Service Commission (Commission) has determined as follows:

1. Lakeside Construction (Lakeside) is a North Dakota corporation with principal offices at 1131 136th Avenue N.E., Finley, North Dakota, 58230.

2. Otter Tail Power Company (Otter Tail) is a Minnesota corporation with principle offices at 215 South Cascade Street, Fergus Falls, Minnesota 56537.

3. On November 29, 2010, the Commission received a Third Party Damage Complaint form from Scott Fritz, One Call Administrator for Otter Tail. The complaint alleged a violation by Lakeside of North Dakota Century Code Chapter 49-23, and a copy is attached as Exhibit 1.

4. North Dakota Century Code Chapter 49-23 codifies the state's One-Call Excavation Notice System law, requiring an excavator to contact the One Call Hotline notification center and provide an excavation or location notice at least forty-eight hours before beginning excavation.

5. North Dakota Century Code section 28-32-22 provides:

28-32-22. Informal disposition.

Unless otherwise prohibited by specific statute or rule, informal disposition may be made of any adjudicative proceeding, or any

part or issue thereof, by stipulation, settlement, waiver of hearing, consent order, default, alternative dispute resolution, or other informal disposition, subject to agency approval. Any administrative agency may adopt rules of practice or procedure for informal disposition if such rules do not substantially prejudice the rights of any party. Such rules may establish procedures for converting an administrative matter from one type of proceeding to another type of proceeding.

6. North Dakota Administrative Code section 69--02-04-05 provides:

69-02-04-05. Waiver of hearing - Shortened procedure.

In any proceeding in which the commission is authorized to act after opportunity for hearing, opportunity is afforded by service of notice fixing a reasonable period of time within which any person desiring to be heard may file a protest or request for a hearing. If a protest or request for hearing is not filed within the time provided, the commission may dispose of the matter on the basis of the pleadings, other submittals, and the studies and recommendations of the staff. A party not requesting oral hearing in the party's pleading is deemed to have waived a hearing for the purpose of the decision, but not for the purpose of applying for rehearing with respect to the decision. If a person requests a hearing but does not show good cause, the commission may determine the matter without a hearing.

7. On October 23, 2010 Lakeside was preparing a site to erect two grain bins near Finley, North Dakota.

8. Lakeside failed to call North Dakota One Call to obtain a One Call ticket before beginning the site preparation work.

9. In the process of preparing the site, Lakeside dug into a three-phase primary circuit electric distribution line causing all three fuses to blow. This resulted in disruption of electric service to customers in Finley, North Dakota.

10. On December 13, 2010 North Dakota Public Service Commission Staff forwarded the Third Party Damage Complaint form to Lakeside.

11. On April 1, 2011, Lakeside filed its response to the complaint, and a copy is attached as Exhibit 2.

12. The Commission is authorized by North Dakota Century Code section 49-07-01.1 to impose a fine of up to \$5,000 for violations of the North Dakota One Call law.

13. Respondent Lakeside agrees to informal disposition of this matter, without a hearing, as provided under North Dakota Century Code section 28-32-22 and North Dakota Administrative Code section 69-02-04-05.

14. Respondent Lakeside acknowledges that at the time of signing the Consent to Entry of Order, it was aware of or had been advised of its rights to a hearing in this matter, to consult an attorney, to present argument to the Commission, and to appeal from any adverse determination after a hearing, and Respondent Lakeside expressly waives those rights.

15. There are no covenants, promises, undertakings, or understanding other than as specifically set forth in this Order.

16. For purposes of resolving this matter, without further administrative proceedings, Lakeside and the Commission have agreed to enter into the following order.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Respondent pay a fine of \$1000 payable to the North Dakota Public Service Commission within ten business days of the date of this Order.

PUBLIC SERVICE COMMISSION

Kevin Cramer	Tony Clark	Brian Kalk
Commissioner	Chairman	Commissioner

CONSENT TO ENTRY OF ORDER


The undersigned, on behalf of Lakeside Construction, states that he has authority to sign on behalf of and bind Lakeside Construction, and that he has read the foregoing Consent Order, that he knows and fully understands its content and effect, that he has been advised of the right to a hearing in this matter, the right to be represented by legal counsel, the right to present evidence and arguments to the Commission, and the right to appeal from an adverse determination after hearing; and that by signing this Consent to Entry of Order he waives those rights in their entirety on behalf of Lakeside Construction and consents to entry of this Order by the North Dakota Public Service Commission. It is further expressly understood that this Order constitutes

the entire settlement agreement between the parties, there being no other promises or agreements, either express or implied.

DATED this 8 day of July, 2011.

Lakeside Construction

By 

Its 
{TITLE}