

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Edwards Gravel and Trucking
Damage Prevention Enforcement**

Case No. PU-12-54

CONSENT ORDER

April 11, 2012

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

1. Edwards Gravel and Trucking (Edwards Gravel) is a North Dakota limited liability company with principal offices at 6752 51st St NW, Plaza, North Dakota, 58771-9453.
2. Reservation Telephone Cooperative (RTC) is a North Dakota cooperative association with principle offices at 24 N Main St, Parshall, North Dakota 58770-0068.
3. On January 31, 2012, the Commission received a Third Party Damage Complaint form from Alicia M. Brenna, attorney for RTC. The complaint alleged a violation by Edwards Gravel of North Dakota Century Code Chapter 49-23 and 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 March 9, 2011 Edwards Gravel was performing an excavation in order to fix a damaged curb stop along 1st St SE, Parshall, North Dakota without first calling North Dakota One Call to obtain a One Call ticket.
8. In the process of the excavation, Edwards Gravel dug into a fiber optic cable.
9. On February 3, 2012 North Dakota Public Service Commission Staff forwarded the Third Party Damage Complaint form to Edwards Gravel for Edwards Gravel's response.
10. On February 9, 2012, Edwards Gravel filed its response to the complaint form. The response is attached as Exhibit 2.
11. The Commission is authorized by North Dakota Century Code section 49-07-01.1 to impose a fine of up to \$5,000.

12. Edwards Gravel 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 evidence and argument to the Commission, to appeal from any adverse determination after a hearing, and Edwards Gravel expressly waives these rights.

13. Edwards Gravel has agreed to informal disposition of this matter, without a hearing, as provided under North Dakota Century Code section 28-32-22.

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

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

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Edwards Gravel pay a fine of \$1,000 payable to the North Dakota Public Service Commission within ten business days of the service date of this Order.

PUBLIC SERVICE COMMISSION

Kevin Cramer
Commissioner

Tony Clark
Chairman

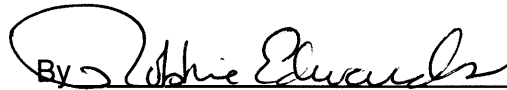
Brian P. Kalk
Commissioner

CONSENT TO ENTRY OF ORDER

The undersigned, on behalf of Edwards Gravel and Trucking, states that he has authority to bind Edwards Gravel and Trucking 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 Edwards Gravel and Trucking 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 23 day of MARCH, 2012.

Edwards Gravel and Trucking

By 

Its owner
{TITLE}