

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
S.J. Louis Construction, Inc.
Damage Prevention Enforcement**

Case No. PU-12-800

CONSENT ORDER

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

1. S.J. Louis Construction, Inc. (S.J. Louis) is a Minnesota corporation, registered with the North Dakota Secretary of State, with principal offices at 1351 W Broadway St., PO Box 459, Rockville, MN 56369-0459.
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 November 29, 2012, the Commission received a Third Party Damage Complaint form from Alicia M. Brenna, attorney for RTC. The complaint alleged a violation by S.J. Louis of North Dakota Century Code Chapter 49-23 and is attached as Exhibit 1.
4. North Dakota Public Service Commission Staff (Staff) conducted an investigation including communication with S.J. Louis, RTC, and North Dakota One Call (One Call).
5. Based on its investigation, Staff determined that on May 3, 2012 S.J. Louis was excavating as defined under North Dakota Century Code section 49-23-01(7) to install city sewer near Highway 85 and 11th Avenue in Watford City, ND. As a result of this excavation, damage was caused to RTC's fiber optic line resulting in the need for RTC

to repair these damages at a cost of approximately \$16,000. S.J. Louis did have a One-Call Locate Ticket (Ticket No. 12035648).

6. As required under North Dakota Century Code § 49-23-04 (3), RTC located and marked or otherwise provided the approximate horizontal location of its underground facilities.

7. North Dakota Century Code § 49-23-05 (5) states that to avoid damage to and minimize interference with underground facilities in and near the construction area, an excavator shall conduct the excavation in a careful and prudent manner.

8. North Dakota Century Code § 49-23-06 (2a) states:

If an excavator fails to comply with this chapter or damages an underground facility, the excavator is liable for all damages caused by the failure to comply with this chapter and for all damages to the facilities and must reimburse the operator for the cost of repair and restoration, loss of product, and interruption of service occurring because of the damage or injury to the facilities, together with reasonable costs and expenses of suit, including reasonable attorney's fees.

9. North Dakota Century Code section 28-32-22 states:

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.

10. North Dakota Administrative Code section 69-02-04-05 states:

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.

11. Based on its investigation, Staff concluded that S.J. Louis violated North Dakota Century Code Section 49-23-05 (5) by failing to conduct the excavation in a careful and prudent manner. As a result, S.J. Louis paid damages to RTC in compliance with North Dakota Century Code Section 49-23-06.

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. S.J. Louis has had a prior violation of the North Dakota One Call law, Case No. GS-12-53, and another alleged violation of the North Dakota One Call law, Case No. PU-12-799.

14. S.J. Louis 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 S.J. Louis 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, S.J. Louis and the Commission have agreed to enter into the following order.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

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

DATED this ___ day of _____, 2013.

PUBLIC SERVICE COMMISSION

**Randy Christmann
Commissioner**

**Brian P. Kalk
Chairman**

**Julie Fedorchak
Commissioner**

CONSENT TO ENTRY OF ORDER

The undersigned, on behalf of S.J. Louis Construction, Inc. states that he is authorized to act on behalf of S.J. Louis Construction, Inc. and bind S.J. Louis Construction, Inc. for purposes of this Consent Order, 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 S.J. Louis Construction, Inc. 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 ___ day of _____, 2013.

S.J. Louis Construction, Inc.

By _____

Its _____
{TITLE}