

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Shane Swanson
Damage Prevention Enforcement**

Case No. PU-13-36

CONSENT ORDER

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

1. Shane Lee Swanson, dba F-M Concrete, is registered with the North Dakota Secretary of State with the address of 304 Probsfield, Georgetown, MN 56546.
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 January 9, 2013, the Commission received a Third Party Damage Complaint form from Scott Fritz, One Call Administrator for Otter Tail. The complaint alleged a violation by Shane Swanson 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 Shane Swanson, Otter Tail, and North Dakota One Call (One Call).
5. Based on its investigation, Staff determined that on or about November 15, 2012 Shane Swanson performed an excavation as defined under North Dakota Century Code section 49-23-01(7) in order to pour some concrete at 2111 15th Street North in Wahpeton ND. As a result of this excavation, damage was caused to the lining of an

9. Shane Swanson violated North Dakota Century Code Section 49-23-04 by assuming the property owner called North Dakota One Call thus he failed to contact the notification center, North Dakota One Call, and provide an excavation or location notice at least forty-eight hours before beginning the excavation.

10. Based on its investigation, Staff concluded that the excavation was not being made in a time of emergency under North Dakota Century Code Section 49-23-04(4), allowing the excavator to give notification after the start of the excavation.

11. Based on its investigation, Staff determined that Shane Swanson did not notify Otter Tail of the excavation and, therefore, there could have been no agreement between Shane Swanson and Otter Tail under North Dakota Century Code Section 49-23-04(1) prior to excavation that would relieve Shane Swanson of his obligation to provide excavation notice at least forty-eight hours before the excavation.

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. Shane Swanson acknowledges that at the time of signing the Consent to Entry of Order, he was aware of or had been advised of his 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 Shane Swanson expressly waives those rights.

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, Shane Swanson and the Commission have agreed to enter into the following order.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Shane Swanson 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.

underground electric cable belonging to Otter Tail resulting in the need for Otter Tail to repair these damages at a cost of approximately \$4400.

6. North Dakota Century Code § 49-23-04(1) states:

Except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice at least forty-eight hours before beginning any excavation, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator. If an operator determines more time is necessary for location, the operator may request a twenty-four-hour extension of the excavation or location notice by notifying the notification center. The notification center shall notify the excavator of the extension. An excavation begins the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice.

7. 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.

8. 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.

DATED this 18 day of March, 2013.

PUBLIC SERVICE COMMISSION

Randy Christmann
Commissioner

Brian P. Kalk
Chairman

Julle Fedorchak
Commissioner

CONSENT TO ENTRY OF ORDER

The undersigned, Shane Swanson states 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 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 18 day of March, 2013.

Shane Swanson

By  _____

Its owner _____

{TITLE}