

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Timber Ridge Plumbing & Heating, Inc.
Damage Prevention Enforcement

Case No. GS-13-353

CONSENT ORDER

The North Dakota Public Service Commission (Commission) has determined that:

Timber Ridge Plumbing & Heating, Inc. (Timber Ridge) is a North Dakota corporation with principal offices at 1104 S 23rd ST in Bismarck, ND 58504-7508.

Montana-Dakota Utilities Co (MDU) is a North Dakota corporation with principle offices at 400 N 4th St, Bismarck, ND 58501-4022.

On June 17, 2013, the Commission received a Third Party Damage Complaint from MDU. The complaint alleged a violation by Timber Ridge of N.D.C.C. ch. 49-23: One-Call Excavation Notice System.

North Dakota Public Service Commission Staff (Staff) conducted an investigation including communication with Timber Ridge, MDU, and North Dakota One Call (NDOC).

N.D.C.C. § 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.

N.D.C.C. § 49-23-04(3)(g) states:

An excavator may not use a location more than ten days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected.

N.D.C.C. § 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.

At the time of the incident that is subject of this proceeding, N.D.C.C. § 49-07-01.1 stated:

Any person who violates any statute, commission order, or commission rule which applies to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, 24-09, 32-25, and 51-05.1, titles 60 and 64, and title 49 except for chapter 49-22 shall, in addition to any other penalty provided, be subject to a civil penalty of not to exceed five thousand dollars. The civil penalty may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.

N.D. Admin. Code § 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.

Based on its investigation, Staff determined that on May 19, 2013, Shane Weltikol rather than Timber Ridge personnel, provided an excavation notice to the NDOC Notification Center with work to begin on May 22, 2013. The NDOC Notification Center assigned a locate ticket number 13050864 to the excavation notice. Under N.D.C.C. § 49-23-04(3)(g), the expiration date for the locate ticket is May 29, 2013.

Based on its investigation, Staff concluded that on June 14, 2013, Timber Ridge personnel began an excavation as defined under N.D.C.C. § 49-23-01(7) while

performing an abandonment of a septic system and tying in a sewer at 4000 Old Red Trail in the city of Mandan, in Morton County, North Dakota. The excavation in the area described by locate ticket number 13050864, occurred 16 days after the expiration of locate ticket. Timber Ridge did not provide an excavation or location notice as required by state law at least forty-eight hours before the excavation.

Based on its investigation, Staff concluded that a 2 inch gas main was damaged during this excavation and that the amount of damage was approximately \$1414.44. The operator has been reimbursed for damages. Seven residential customers lost service for approximately 2 hours. This did not cause an adverse effect on the customers.

Based on its investigation, Staff concluded that there was no agreement between Timber Ridge and MDU under N.D.C.C. § 49-23-04(1) prior to excavation that would relieve Timber Ridge of its obligation to provide excavation notice at least forty-eight hours before the excavation.

Based on its investigation, Staff concluded that the excavation was not being made in a time of emergency under N.D.C.C. § 49-23-04(4), allowing the excavator to give notification after the start of the excavation.

Based on its investigation, Staff concluded that Timber Ridge violated N.D.C.C. § 49-23-04 by failing to provide an excavation notice to the NDOC Notification Center at least forty-eight hours before beginning its excavation.

Timber Ridge and the Commission have agreed to resolve this matter without further administrative proceedings.

In the attached Consent to Entry of Order, Timber Ridge expressly waives 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.

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

The Commission issues the following:

Order

1. Timber Ridge Plumbing & Heating, Inc. shall 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 _____, 2014.

PUBLIC SERVICE COMMISSION

**Randy Christmann
Commissioner**

**Brian Kalk
Chairman**

**Julie Fedorchak
Commissioner**

CONSENT TO ENTRY OF ORDER

The undersigned, on behalf of Timber Ridge Plumbing & Heating, Inc. is authorized to act on behalf of Timber Ridge Plumbing & Heating, Inc. and bind Timber Ridge Plumbing & Heating, Inc. for purposes of this Consent Order, has read the Consent Order, knows and fully understands its content and effect, 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 waives those rights in their entirety on behalf of Timber Ridge Plumbing & Heating, Inc. and consents to entry of this Order by the North Dakota Public Service Commission to resolve the violation without further administrative proceedings. 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 30 day of January, 2014.

Timber Ridge Plumbing & Heating, Inc.

By Tom Barkman

Its president
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