

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Rodenbough Trucking and Excavating, Incorporated
Damage Prevention Enforcement

Case No. GS-13-611

CONSENT ORDER

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

1. Rodenbough Trucking and Excavating, Incorporated (Rodenbough Trucking) is a foreign business corporation whose state of origin is Idaho with principal offices at 304 2ND NE PO Box 339 Surrey, ND 58785-0339.
2. Montana Dakota Utilities (MDU) is a North Dakota corporation with principle offices at 400 N. 4th Street PO Box 1457 Bismarck, ND 58502.
3. On July 11, 2013, the Commission received a Third Party Damage Complaint from MDU. The complaint alleged a violation by Rodenbough Trucking of North Dakota Century Code Chapter 49-23.
4. North Dakota Public Service Commission Staff (Staff) conducted an investigation including communication with Rodenbough Trucking, MDU, and North Dakota One Call (One Call).
5. Based on its investigation, Staff determined that on July 8, 2013, Rodenbough Trucking personnel began an excavation at 1707 22nd Ave. SW, in the city of Minot, ND 58701, as defined under North Dakota Century Code section 49-23-01(7).

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 §49-23-04 (3)(g) states:

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

8. North Dakota Century Code §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.

9. North Dakota Administrative 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.

10. Based on its investigation, Staff concluded that Rodenbough Trucking personnel obtained a locate ticket, ticket number 13079090, that had a work to begin date of June 21, 2013. The one call ticket therefore expired on June 30, 2013. Rodenbough Trucking was excavating on July 8, 2013.

11. Based on its investigation, Staff concluded that Rodenbough Trucking did not call for a new one call ticket, and that a violation of North Dakota Century Code §49-23-04(1) did occur.

12. Based on its investigation, Staff concluded that there was no agreement between Rodenbough Trucking and MDU, under North Dakota Century Code §49-23-04(1), prior to continuing excavation, that would relieve Rodenbough Trucking of its obligation to renew their locate ticket at least forty-eight hours before continuing excavation.

13. Based on its investigation, Staff concluded that the excavation was not being made in a time of emergency under North Dakota Century Code §49-23-04(4), that would relieve Rodenbough Trucking of its obligation to renew their locate ticket at least forty-eight hours before continuing excavation.

14. Based on its investigation, Staff concluded that Rodenbough Trucking struck a 2" gas main causing \$401.11 in damages. MDU billed Rodenbough Trucking for the damages and received payment.

15. The Commission finds that Rodenbough Trucking violated North Dakota Century Code §49-23-04 by failing to contact the notification center, North Dakota One Call, and

provide an excavation or location notice at least forty-eight hours before continuing its excavation.

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

17. Rodenbough Trucking 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 Rodenbough Trucking expressly waives those rights.

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

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

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Rodenbough Trucking 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 __15th__ day of __November_____, 2013.

PUBLIC SERVICE COMMISSION

Randy Christman
Commissioner

Brian P. Kalk
Chairman

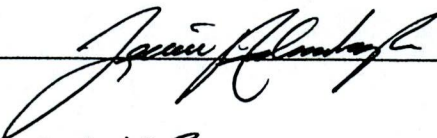
Julie Fedorchak
Commissioner

CONSENT TO ENTRY OF ORDER

The undersigned, on behalf of Rodenbough Trucking states that s/he is authorized to act on behalf of Rodenbough Trucking and bind Rodenbough Trucking for purposes of this Consent Order, that s/he has read the foregoing Consent Order, that s/he knows and fully understands its content and effect, that s/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 s/he waives those rights in their entirety on behalf of Rodenbough 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 31 day of JANUARY, 2013.

Rodenbough Trucking & Excavating, Incorporated

By 
Its OWNER
{TITLE}

