

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Selland Construction Inc
Damage Prevention Enforcement

Case No. GS-13-802

CONSENT ORDER

August 5, 2014

The North Dakota Public Service Commission (Commission) finds:

Selland Construction Inc. (Selland) is a registered North Dakota foreign business corporation with offices located at 5805 Sherman Lane, Williston, ND 58801.

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

On September 17, 2013, the Commission received a ND One-Call Complaint form from Paul Reily, District Gas Superintendent for MDU. The complaint alleged a violation by Selland of N.D.C.C. ch. 49-23, the One-Call Excavation Notice System.

Commission Advocacy Staff (Staff) conducted an investigation including communication with Selland, MDU, and North Dakota One Call (NDOC).

N.D.C.C. § 49-23-05 provides:

To avoid damage to and minimize interference with underground facilities in and near the construction area, an excavator shall:

1. Maintain a clearance between an underground facility and the cutting edge or point of any mechanized equipment, considering the known limit of control of the cutting edge or point to avoid damage to the facility.
2. Provide support in a manner approved by the operator for underground facilities in and near the construction area, including backfill operations to protect the facilities. Backfill must be of a material equal to or better in both quality and quantity to the existing backfill.
3. Assume ownership of materials used to mark the facility, use reasonable efforts to maintain markings during excavation, and when possible remove all tangible marking materials used to mark the facility.

4. Assume the cost of excavation to expose the facility unless otherwise indicated by owner of facility.
5. Conduct the excavation in a careful and prudent manner.
6. Properly manage spoil material to prevent shifting or falling material that could damage belowground facilities.

N.D.C.C. § 49-23-06 (1)(a) provides:

If any damage occurs to an underground facility or its protective covering, the excavator shall notify the operator as soon as reasonably possible.

N.D.C.C. § 49-23-06(1)(c) provides:

An excavator who knowingly damages an underground facility and who does not notify the operator as soon as reasonably possible or who backfills in violation of subdivision b is guilty of a class A misdemeanor.

N.D.C.C. § 28-32-22 provides:

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.

N.D.C.C. § 49-07-01.1 provides:

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 chapters 49-22 and 49-23, shall, in addition to any other penalty provided, be subject to a civil penalty of not to exceed five thousand dollars. A violation occurring under chapter 49-23, in addition to any other penalty, is subject to a civil penalty not to exceed twenty-five thousand dollars. The commission shall develop policies for the assessment of penalties under chapter 49-23 which will take into consideration the severity of damages and the conduct of the offender. 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 provides:

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.

Investigation Summary

As alleged by MDU's complaint, on July 19, 2013, Selland began an excavation as defined in N.D.C.C. § 49-23-01(7) while installing the natural gas distribution system and other utilities at Meadows Subdivision, corner of 70th Street East and University Avenue North, Williston, North Dakota. As a result of Selland excavating a common trench for these utility installations, damage was caused on July 19, 2013, to three gas service lines, a 2-inch gas main, and a 4-inch gas main, all owned and operated by MDU. MDU alleges that the cost to repair its facilities was approximately \$3266.86.

Based on its investigation, Staff determined that on July 12, 2013, Selland personnel provided an excavation notice to the North Dakota One Call (NDOC) Notification Center with work to begin on July 16, 2013 at 70th St E and 2nd Ave W in Williston, ND. The NDOC Notification Center assigned locate ticket number 13099771 to the excavation notice. The underground facilities were located and marked as accurately as possible, and the facility marks were visible in the area of excavation. On July 19, 2013, Selland personnel began an excavation of a common trench for installation of the natural gas distribution system and other utilities. As a result of this excavation, damage was caused by mechanized equipment to MDU facilities. MDU was not notified of the damage until July 24, 2013. No customers were affected. Selland reimbursed MDU for the damages.

Based on its investigation, Staff concluded that there was no agreement between Selland and MDU under N.D.C.C. § 49-23-04(1) prior to excavation that would relieve Selland 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 Selland violated N.D.C.C. § 49-23-05(5) by failing to conduct the excavation in a careful and prudent manner.

Based on its investigation, Staff concluded that Selland violated N.D.C.C. § 49-23-

06(1)(a) by failing to notify the operator as soon as reasonably possible of damage caused to an underground facility.

Concurrences

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

In the attached Consent to Entry of Order, Selland 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.

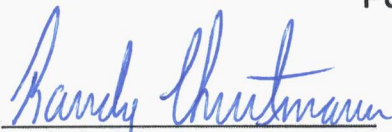
There are no covenants, promises, undertakings, or understanding other than as specifically set forth in this Order.

The Commission issues the following:

Order

The Commission orders Selland Construction Inc. to pay a fine of \$2,000 payable to the North Dakota Public Service Commission within ten business days of the effective date of this Order.

PUBLIC SERVICE COMMISSION



Randy Christmann
Commissioner



Brian Kalk
Chairman



Julie Fedorchak
Commissioner

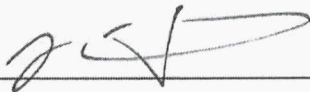
CONSENT TO ENTRY OF ORDER

The undersigned, on behalf of Selland Construction Inc., is authorized to act on behalf of Selland Construction Inc. and bind Selland Construction 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 Selland Construction 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 7th day of August 2014

Selland Construction Inc.

By  JASON GAUL

Its VP
{TITLE}