



Public Service Commission

State of North Dakota

COMMISSIONERS

Brian P. Kalk
Randy Christmann
Julie Fedorchak

Executive Secretary
Darrell Nitschke

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

January 15, 2014

Jody Randall, Business Management
American Civil Constructors, Inc.
4901 S Windermere Street
Littleton, CO 80120-1021

Re: Third Party Damage Complaint
Case No. PU-13-862

Dear Ms. Randall:

As discussed with you during our telephone conversation of January 14, 2014, enclosed are two copies of a Consent Order for the damage prevention case against American Civil Constructors, Inc., Case No. PU-13-862. Please review the enclosed document to ensure that you understand and agree to its terms. If so, please sign and date the last page of both copies, and mail both copies to the address below.

Darrell Nitschke, Executive Secretary
North Dakota Public Service Commission
600 E Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0408

The penalty payment may be made at the same time the signed Consent Orders are returned, even though the penalty would not be due until ten business days after the Consent Order is signed by the Commission.

Please contact me at 701-328-4188 or jprescott@nd.gov if you have any questions regarding this correspondence.

Sincerely,

Julie Prescott
Public Utilities Division

4 **PU-13-862** Filed: 1/15/2014 Pages: 6
Letter enclosing unexecuted Consent Order

Public Service Commission Staff

Julie Prescott

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
American Civil Constructors, Inc.
Damage Prevention Enforcement**

Case No. PU-13-862

CONSENT ORDER

January 15, 2014

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

1. American Civil Constructors, Inc. (ACCI) is a foreign business corporation with principal offices at 4901 South Windermere Street, Littleton, Colorado, 80120-1021. National Corporate Research, Ltd., 1501 North 12th Street, Suite 1, Bismarck, North Dakota, 58501-2713, is its registered agent.
2. Verendrye Electric Cooperative, Inc. (Verendrye) is a North Dakota cooperative association with principal offices at 615 Highway 52 West, Velva, North Dakota 58790-7417.
3. On November 18, 2013, the Commission received a Third Party Damage Complaint from Bruce Carlson, General Manager of Verendrye. The complaint alleged a violation by ACCI of North Dakota Century Code chapter 49-23 and is attached as Exhibit 1.
4. Public Service Commission Staff (Staff) conducted an investigation including communication with North Dakota One Call (One Call), Verendrye, and ACCI.

5. 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.

6. North Dakota Century Code §49-23-06(2)(a) 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.

7. 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 of 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 §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.

9. Based on its investigation, Staff determined that on November 18, 2013, ACCI performed an excavation as defined in North Dakota Century Code section 49-23-01(7)10.

10. Based on its investigation, Staff determined that ACCI failed to provide an excavation or location notice at least forty-eight hours before the excavation as required by North Dakota Century Code section 49-23-04(1).

11. 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).

12. Based on its investigation, Staff concluded that an underground electric cable owned and operated by Verendrye was damaged.

13. Based on its investigation, Staff concluded that Verendrye has been reimbursed approximately \$6,776 for damage to its facilities.

14. The Commission is authorized by North Dakota Century Code section 49-07-01.1 to impose a fine of up to \$25,000 for violations of the North Dakota One Call law.

15. ACCI acknowledges that at the time of signing the Consent to Entry of Order, ACCI was aware of or had been advised of the right 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 ACCI expressly waives those rights.

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

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

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. American Civil Constructors, Inc., agrees to pay a fine of \$1,000 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 P. Kalk
Chairman

Julie Fedorchak
Commissioner

CONSENT TO ENTRY OF ORDER

The undersigned, on behalf of American Civil Constructors, Inc., has authority to bind American Civil Constructors, Inc., to requirements to be set forth by the Commission in this Consent Order; has read the foregoing Consent Order 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, American Civil Constructors, Inc., 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 ____ day of _____, 2014.

American Civil Constructors, Inc.

By _____

Its _____
{TITLE}