



# Public Service Commission

## State of North Dakota

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### COMMISSIONERS

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Randy Christmann  
Julie Fedorchak

Executive Secretary  
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October 7, 2014

Ron Guier  
On Grade Excavation LLC  
2050 Texas Ridge Rd  
Deary, Idaho 83823-9614

Re: Damage Prevention Case No. PU-14-664

Dear Mr. Guier,

As discussed during our telephone conversation of October 2, 2014, enclosed are two copies of a Consent Order for the damage prevention case against On Grade Excavation LLC, Case No. PU-14-664. 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 within 10 days of the date of this letter to:

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

You may also include payment for the penalty at the same time you return the signed Consent Orders even though the penalty is not due until 10 business days after the Consent Order is approved and signed by the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Prescott".

Julie Prescott  
Compliance and Competitive Markets Division

**STATE OF NORTH DAKOTA**

**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
On Grade Excavation LLC  
Damage Prevention Enforcement**

**Case No. PU-14-664**

**CONSENT ORDER**

**October 22, 2014**

The North Dakota Public Service Commission (Commission) finds:

On Grade Excavation LLC (On Grade) is a limited liability company with offices at 2050 Texas Ridge Rd, Deary, Idaho 83823-9614.

Underwood is a city incorporated in the State of North Dakota, with offices located at 88 Lincoln Avenue, Underwood, North Dakota, 58565.

On July 31, 2014, the Commission received a Third Party Damage Complaint form from Diane Schell (Schell), Auditor for Underwood. The complaint indicates a violation by On Grade of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

Commission Advocacy Staff (Staff) conducted an investigation including communication with On Grade, Schell, and North Dakota One Call (NDOC).

N.D.C.C. § 49-23-04(1) provides:

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. § 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**

Based on its investigation, Staff concluded that in either late April or early May 2014, On Grade personnel began an excavation as defined under North Dakota Century Code section § 49-23-01(7) while digging a basement at 914 Marion Drive in Underwood. A search of the National Ticket Management System database (database) was performed as part of the Staff investigation into the complaint. The database does not contain a

record of an excavation notice provided by On Grade for the location specified in the complaint.

Based on its investigation, Staff concluded that no damage occurred during this excavation.

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.

Based on its investigation, Staff concluded that On Grade violated North Dakota Century Code section 49-23-04(1) by failing to provide an excavation notice to the NDOC Notification Center at least forty-eight hours before beginning its excavation.

### **Concurrences**

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

In the attached Consent to Entry of Order, On Grade 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 On Grade to pay a fine of \$500 payable to the North Dakota Public Service Commission within ten business days of the effective date of this Order.

## **PUBLIC SERVICE COMMISSION**

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**Randy Christmann**  
**Commissioner**

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**Brian Kalk**  
**Chairman**

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**Julie Fedorchak**  
**Commissioner**

**CONSENT TO ENTRY OF ORDER**

The undersigned, on behalf of On Grade Excavation LLC, is authorized to act on behalf of On Grade Excavation LLC and bind On Grade Excavation LLC 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 On Grade Excavation LLC, 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 \_\_\_\_\_ day of October 2014

On Grade Excavation LLC

By \_\_\_\_\_

Its \_\_\_\_\_  
{TITLE}