

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**Public Service Commission
Envision Land & Development, LLC
Damage Prevention Enforcement**

Case No. PU-14-702

CONSENT ORDER

March 25, 2015

The North Dakota Public Service Commission (Commission) finds:

Envision Land & Development, LLC (Envision) is a registered foreign corporation with offices located at 2200 6th Ave, Suite 523, Seattle, WA 98121-1816.

On August 22, 2014, the Commission received a ND One-Call Complaint from Verendrye Electric Coop, Inc. (Verendrye). The complaint alleged a violation by Envision of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

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

North Dakota Century Code section 49-23-05(5) provides:

To avoid damage to and minimize interference with underground facilities in and near the construction area, an excavator shall conduct the excavation in a careful and prudent manner.

North Dakota Century Code section 49-23-01(3) provides:

“Careful and prudent manner” means excavating within twenty-four inches [60.96 centimeters] of the outer edges of an underground facility located manually and marked by the owner or operator by stakes, paint, or other customary manner, and supporting and protecting the uncovered facility.

North Dakota Century Code section 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.

North Dakota Century Code section 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.

North Dakota Century Code section 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.

North Dakota Administrative Code section 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 on August 22, 2014, Envision personnel began an excavation as defined under North Dakota Century Code section 49-23-01(7) for the construction of a new gas station/convenience store at the northeast quadrant of the intersection of 16th Street southwest and north of 37th Avenue southwest in Minot, ND.

Based on its investigation, Staff determined that on August 12, 2014, Advanced Project Solutions (the general contractor for the construction project) personnel rather than Envision provided an excavation notice to the North Dakota One Call (NDOC) Notification Center with work to begin on August 14, 2014 at northeast side of the intersection of 16th Street SW and 37th Avenue SW in Minot, ND. The NDOC Notification Center assigned locate ticket number 14131008 to the excavation notice which indicates the work was being done for utility work.

Based on its investigation, Staff concluded that a 500mcm/12.5 kilovolt electric line was damaged during this excavation and that the amount of damage was approximately \$1302. The operator has been reimbursed for damages. Two business customers lost service for two hours as a result of the damage.

Based on its investigation, Staff concluded that Envision violated North Dakota Century Code section 49-23-05(5) by failing to conduct the excavation in a careful and prudent manner.

Concurrences

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

In the attached Consent to Entry of Order, Envision 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 Envision to pay a fine of \$700 payable to the North Dakota Public Service Commission within ten business days of service of this Order.

PUBLIC SERVICE COMMISSION



Randy Christmann **Julie Fedorchak** **Brian Kalk**
Commissioner **Chairman** **Commissioner**

CONSENT TO ENTRY OF ORDER

The undersigned, on behalf of Envision Land & Development, LLC (Envision) is authorized to act on behalf of Envision and bind Envision 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 Envision, 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 19th day of March 2015

Envision Land & Development, LLC

By  _____

Its Manager _____
{TITLE}