

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Aqua Lawn & Landscape, Inc.
Damage Prevention Enforcement

Case No. GS-14-724

CONSENT ORDER

DATED this 6th day of November 2014

The North Dakota Public Service Commission (Commission) finds:

Aqua Lawn & Landscape, Inc. (Aqua Lawn) is a North Dakota corporation with offices located at 2208 Ann St, West Fargo, ND 58078-3948.

On September 23, 2014, the Commission received a ND One-Call Complaint from Xcel Energy (Xcel). The complaint alleged a violation by Aqua Lawn of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

Commission Advocacy Staff (Staff) conducted an investigation including communication with Aqua Lawn, Xcel, and North Dakota One Call (NDOC).

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.
5. 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 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 determined that Signature Landscapes rather than Aqua Lawn provided an excavation notice to the North Dakota One Call Notification Center (NDOC) on July 21, 2014, with work at 3342 1st St E in West Fargo, North Dakota, to begin on July 23, 2014. The NDOC assigned locate ticket number 14111634 to the excavation notice, which indicates the work was being performed as part of a landscape project..

Based on its investigation, Staff concluded that on July 24, 2014, Aqua Lawn

personnel began an excavation as defined under North Dakota Century Code section 49-23-01(7) while performing a sprinkler system install at 3342 1st St E in West Fargo, North Dakota.

Based on its investigation, Staff concluded that a natural gas service line was damaged during this excavation and that the amount of damage was approximately \$815.29. The operator has not been reimbursed for damages. The line was properly located and marked, 1 customer lost service, and no critical facilities such as hospitals or clinics were affected by the incident.

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

Concurrences

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

In the attached Consent to Entry of Order, Aqua Lawn 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.

Aqua Lawn will reimburse Xcel for the costs they identify under North Dakota Century Code section 49-23-06(2)(a):" 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".

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 Aqua Lawn 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.

PUBLIC SERVICE COMMISSION


Randy Christmann
Commissioner


Brian Kalk
Chairman



Julie Fedorchak
Commissioner

CONSENT TO ENTRY OF ORDER

The undersigned, on behalf of Aqua Lawn & Landscape, Inc. (Aqua Lawn) is authorized to act on behalf of Aqua Lawn and bind Aqua Lawn 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 Aqua Lawn, 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 10 day of 24 2014

Aqua Lawn & Landscape, Inc.

By  _____

Its president _____
{TITLE}