

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Northern Improvement Company
Damage Prevention Enforcement

Case No. PU-15-628

CONSENT ORDER

NOTE: Date of Order will be inserted here when ready for Commission action

Preliminary Statement

On August 7, 2015, the Commission received a ND One-Call Complaint from Montana Dakota Utilities Co. (MDU). The complaint alleged a violation by Northern Improvement Company (Northern) of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

On August 11, 2015 Public Service Commission staff sent a copy of the ND One Call Complaint to Northern for response.

On September 4, 2015 Northern filed a response.

Discussion

Northern is a North Dakota corporation with principal offices at 4000 12th Ave NW, Fargo, ND 58108-2846.

MDU is a foreign corporation authorized to do business in North Dakota.

Commission Advocacy Staff (Staff) conducted an investigation of the alleged violation, including review of the filings and communication with Northern, MDU, and North Dakota One Call (NDOC).

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 June 17, 2015, Northern personnel provided an excavation notice to the NDOC Notification Center for work to begin on June 19, 2015 at the intersection of 40th St E and 4th Ave E in Dickinson, ND. The NDOC Notification Center assigned locate ticket number 15090572 to the excavation notice. Under North Dakota Century Code section 49-23-04(3)(g), the expiration date for the locate ticket was July 10, 2015.

Based on its investigation, Staff concluded that on June 29, 2015, Northern personnel began an excavation as defined under North Dakota Century Code section 49-23-01(7) while performing street construction at the location identified in the One-Call ticket.

Based on its investigation, Staff concluded that a 4 inch Natural Gas main was damaged during the excavation by Northern's bulldozer and that the amount of damage was approximately \$2055.46. The operator has been reimbursed for damages. This damage occurred 15 feet away from an incident earlier that same day where Northern damaged the same natural gas line with a backhoe.

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

prudent manner.

This agreement may be executed in counterparts and duplicate copies, each of which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.

Concurrences

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

In the attached Consent to Entry of Order, Northern 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:

1. Northern Improvement Company violated North Dakota Century Code Section 49-23-05(5) by failing to conduct the excavation in a careful and prudent manner.
2. Northern Improvement Company to pay a fine of \$2900, payable to the North Dakota Public Service Commission within ten business days of service of this Order.

PUBLIC SERVICE COMMISSION

Randy Christmann
Commissioner

Julie Fedorchak
Chairman

Brian P. Kalk
Commissioner

CONSENT TO ENTRY OF ORDER

The undersigned, on behalf of Northern Improvement Company (Northern). is authorized to act on behalf of Northern and bind Northern 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, the right to cross examine witnesses, and the right to appeal from an adverse determination after hearing; and that, by signing this Consent to Entry of Order, waives all those rights in their entirety on behalf of Northern, 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 8 day of April 2016

Northern Improvement Company

By *Mark A. Glendon*

Its *Vice President*
{TITLE}