

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Precision Dirtworks, LLC.
Damage Prevention Enforcement**

Case No. PU-15-750

CONSENT ORDER

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

Preliminary Statement

On November 30, 2015, the Commission received a ND One-Call Complaint from Xcel Energy. The complaint alleged a violation by Precision Dirtworks, LLC. (Precision) of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

On December 3, 2015 Public Service Commission staff sent a copy of the ND One Call Complaint to Precision for response.

On December 15, 2015 Precision filed a response.

Discussion

Precision is a North Dakota corporation with principal offices at 1935 4th Ave NW, West Fargo, ND 58078-1316.

Xcel Energy, Inc. (Xcel) 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 Precision, Xcel, and North Dakota One Call (NDOC).

North Dakota Century Code section 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.

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 July 23, 2015 at 7:22am, Precision personnel provided an excavation notice to the NDOC Notification Center for work to begin on July 27, 2015 at 721 1st St N, Fargo, ND. The NDOC Notification Center assigned locate ticket number 15121203 to the excavation notice.

Based on its investigation, Staff concluded that on July 23, 2015 at 9:48am, Precision personnel began an excavation as defined under North Dakota Century Code section 49-23-01(7) while installing a water main at 721 1st St N, Fargo, North Dakota. The excavation in the area described by locate ticket number 15121203, occurred two hours after the locate ticket was placed, or 4 days before the ticket was valid. Precision did not contact the NDOC notification center forty-eight hours before beginning an excavation.

Based on its investigation, Staff concluded that a 2 inch natural gas main was damaged during this excavation and that the amount of damage was approximately \$3278. The operator has been reimbursed for damages. 1 customer lost service for approximately 1 hour.

Based on its investigation, Staff concluded that there was no agreement between Precision and Xcel under North Dakota Century Code section 49-23-04(1) prior to excavation that would relieve Precision of its obligation to provide excavation notice at least forty-eight hours before the 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 Precision 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.

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

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

In the attached Consent to Entry of Order, Precision 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. Precision Dirtworks, LLC. violated North Dakota Century Code Section 49-23-04(1) by failing to contact the NDOC notification center forty-eight hours before beginning an excavation.
2. Precision Dirtworks, LLC. Is assessed a civil penalty in the amount of \$1,600.
3. Precision shall remit \$800 of the \$1600 civil penalty, payable to the North Dakota Public Service Commission, within ten business days of service of this Order.
4. The remaining \$800 civil penalty is suspended, on the condition that Precision Dirtworks, LLC. Commits no further violations of the North Dakota One Call Law (North Dakota Century Code Chapter 49-23) within five years of the date of this order.
5. In the event the Commission finds Precision Dirtworks, LLC. violated the North Dakota One Call Law within five years of the date of this order, Precision Dirtworks, LLC. Shall remit the suspended portion of the penalty, \$800, within the time ordered by the Commission, in addition to any additional fines or penalties imposed by the Commission for the subsequent violation.
6. If within five years of the date of this order the Commission finds no subsequent violation of the North Dakota One Call Law by Precision Dirtworks, LLC., the Commission will withdraw the suspended portion of the penalty, \$800.

PUBLIC SERVICE COMMISSION

Randy Christmann
Commissioner

Julie Fedorchak
Chairman

Brian P. Kalk
Commissioner

CONSENT TO ENTRY OF ORDER

The undersigned, on behalf of Precision Dirtworks, LLC. (Precision). is authorized to act on behalf of Precision and bind Precision 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 Precision, 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 12 day of APRIL 2016

Precision Dirtworks, LLC.

By Travis Anderson
TRAVIS ANDERSON

Its PRESIDENT
{TITLE}