

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Qwest Corporation
Damage Prevention Enforcement**

Case No. PU-17-147

**Public Service Commission
Qwest Corporation
Damage Prevention Enforcement**

Case No. PU-17-241

ORDER ON CONSENT AGREEMENT

October 4, 2017

Preliminary Statement

On April 13, 2017, the Commission received a ND One-Call Complaint from Veit & Company, Inc. alleging a violation by CenturyLink Communications, LLC (CenturyLink) of North Dakota Century Code section 49-23: One-Call Excavation Notice System, Case No. PU-17-147.

On April 21, 2017, the Commission sent a letter to CenturyLink enclosing the One-Call Complaint in Case No. PU-17-147.

On May 8, 2017, CenturyLink filed a response to the One-Call Complaint in Case No. PU-17-147.

On June 6, 2017, the Commission received a ND One-Call Complaint from North Plains Utility Contracting alleging a violation by CenturyLink of North Dakota Century Code section 49-23: One-Call Excavation Notice System, Case No. PU-17-241.

On June 7, 2017, the Commission sent a letter to CenturyLink enclosing the One-Call Complaint in Case No. PU-17-241.

On June 22, 2017, CenturyLink filed a response to the One-Call Complaint in Case No. PU-17-241.

On September 15, 2017, the Public Service Commission Advocacy Staff (Advocacy Staff) and Qwest Corporation (Qwest) filed a Consent Agreement for the resolution of Case No. PU-17-147 and Case No. PU-17-241.

Discussion

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Veit & Company, Inc. is a foreign corporation authorized to do business in North Dakota with offices located at 14000 Veit PI, Rogers, Minnesota 55374.

North Plains Utility Contracting LLC is a North Dakota company authorized to do business in North Dakota with offices located at 802 S 5th St, Devils Lake, North Dakota 58301.

CenturyLink QC is a trade name owned by Qwest Corporation. Qwest Corporation is a foreign corporation authorized to do business in North Dakota with principal offices located at 100 CenturyLink Dr, Monroe, Louisiana 71203.

In Case No. PU-17-147 and Case No. PU-17-241, the complaints allege a violation by CenturyLink of North Dakota Century Code section 49-23-04(3)(a) for failure to locate and mark its underground facility within 48 hours.

North Dakota Century Code section 49-23-04(3)(a) provides that "An operator, within forty-eight hours, or any extension of that period, after receiving an excavation notice from the center, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator, shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator."

The complaints indicate there was no damage to underground facilities.

As a result of its investigation, Advocacy Staff concluded that Qwest violated North Dakota Century Code section 49-23-04(3)(a) in Case No. PU-17-147 and Case No. PU-17-241.

Qwest and Advocacy Staff engaged in good faith settlement discussions resulting in a Consent Agreement intended to resolve the violations alleged in Case No. PU-17-147 and Case No. PU-17-241.

Under the Consent Agreement, Qwest agrees to be assessed a civil penalty of \$3,500 in Case No. PU-17-147 and \$3,500 in Case No. PU-17-241 for a total of \$7,000, payable to the North Dakota Public Service Commission, within ten business days of service of this Order.

Having considered this matter, the Commission finds the Consent Agreement filed on August 28, 2017, is reasonable and acceptable. Therefore, the Commission issues the following:

Order


The Commission Orders:

1. The Consent Agreement filed by Qwest and Advocacy Staff on September 15, 2017, is approved. A copy of the Consent Agreement is attached to and made a part of this Order.
2. Qwest will remit a penalty of \$7,000, payable to the North Dakota Public Service Commission within ten business days of service of this Order.

PUBLIC SERVICE COMMISSION



**Brian Kroshus
Commissioner**



**Randy Christmann
Chairman**



**Julie Fedorchak
Commissioner**



Public Service Commission
State of North Dakota

COMMISSIONERS

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Julie Fedorchak
Brian Kroshus

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September 15, 2017

Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
600 E. Blvd. Ave. Dept. 408
Bismarck, ND 58505-0480

via hand delivery

Re: Public Service Commission
Qwest Corporation
Damage Prevention Enforcement

PU-17-147

Public Service Commission
Qwest Corporation
Damage Prevention

PU-17-241

Dear Mr. Nitschke:

Enclosed is a Consent Agreement for filing in the above captioned cases.

Best regards,

John Schuh
Legal Counsel

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Consent Agreement

Public Service Commission Advocacy Staff
John Schuh, Advocacy Staff Counsel

Enclosure

5 **PU-17-147** Filed: 9/15/2017 Pages: 4
Consent Agreement

Public Service Commission Advocacy Staff
John Schuh, Advocacy Staff Counsel

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	Case No. PU-17-147
)	PU-17-241
vs.)	
)	CONSENT AGREEMENT
Qwest Corporation,)	
)	
Respondent.)	

Preliminary Statement

This Consent Agreement is entered into by and between Qwest Corporation ("Qwest") and the Public Service Commission Advocacy Staff ("Staff") (together, the "Parties") for resolution of Docket No. PU-17-147 and PU-17-241.

On April 13, 2017, the Commission received a ND One-Call Complaint from Veit & Company, Inc (Veit) under Case No. PU-17-147. The complaint alleged a violation by Qwest of North Dakota Century Code section 49-23-04(3)(a) for failure to locate and mark its underground facility within 48 hours.

On June 6, 2017, the Commission received a ND One-Call Complaint from North Plains Utility Contracting (North Plains) under Case No. PU-14-241. The complaint alleged a violation by Qwest Corporation, (Qwest) of North Dakota Century Code section 49-23-04(3)(a) for failure to locate and mark its underground facility within 48 hours.

North Dakota Century Code section 49-23-04(3)(a) provides that "An operator, within forty-eight hours, or any extension of that period, after receiving an excavation notice from the center, excluding Saturdays, Sundays, and holidays, unless otherwise

agreed to between the excavator and operator, shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator.”

Having investigated the alleged violations, Staff has concluded that Qwest violated North Dakota Century Code section 49-23-04(3)(a) in Case No. PU-17-147 and No. PU-17-241.

Qwest and Staff engaged in good faith settlement discussions resulting in this Consent Agreement. Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and that entry of this Consent Agreement is the most appropriate means of resolving this administrative action, Staff and Qwest agree to the following, subject to the approval and acceptance of the Commission:

1. Qwest violated North Dakota Century Code section 49-23-04(3)(a) in Case No. PU-17-147 by failing to locate and mark its underground facility within 48 hours.
2. Qwest violated North Dakota Century Code section 49-23-04(3)(a) in Case No. PU-17-241 by failing to locate and mark its underground facility within 48 hours.
3. Qwest agrees to be assessed a civil penalty of \$3,500 in Case No. PU-17-147 and \$3,500 in Case No. PU-17-241 for a total of \$7,000, payable to the North Dakota Public Service Commission within ten business days of service of an Order Adopting Consent Agreement (Order).
4. Qwest consents to the filing of the Consent Agreement and an Order and hereby waives any further procedural requirements with respect to its issuance. Subject to the Order, Qwest understands and agrees to waive all rights to contest the violations, the right to be represented by counsel, the right to present evidence


and arguments to the Commission, the right to cross examine witnesses, or contest the validity of this Consent Agreement and Order Adopting this Consent Agreement, including all rights to administrative or judicial hearings or appeals.

5. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Agreement and Order.
6. This agreement may be executed in counterparts and duplicate copies, each which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.
7. The undersigned is authorized to act on behalf of Qwest and bind Qwest for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 14th day of September, 2017

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF - DAMAGE PREVENTION

By: _____


John M. Schuh
Advocacy Counsel
12th Floor, Dept. 408
600 Boulevard Ave.
Bismarck, ND 58505-0480

Dated this 15th day of September, 2017

Qwest Corporation

By: _____


Kent Blickensderfer
State Legislative Affairs Director