



Public Service Commission

State of North Dakota

COMMISSIONERS

Randy Christmann
Julie Fedorchak
Brian Kroshus

Executive Secretary
Darrell Nitschke

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

February 26, 2018

Darrell Nitschke
Executive Director
ND Public Service Commission
600 E. Boulevard Ave. Dept. 408
Bismarck, ND 58505-0480

Via Hand Delivery

Re: Case No. PU-17-457
Public Service Commission
Wagner Construction, Inc.
Damage Prevention Enforcement

Case No. PU-17-458
Public Service Commission
Wagner Construction, Inc.
Damage Prevention Enforcement

Case No. PU-17-459
Public Service Commission
Wagner Construction, Inc.
Damage Prevention Enforcement

Dear Mr. Nitschke:

Enclosed is a copy of the Consent Agreement to be filed in the above proceedings.

Best Regards,

John Schuh
Legal Counsel

Enclosure

3 **PU-17-459** Filed: 2/26/2018 Pages: 5
Consent Agreement

3 **PU-17-458** Filed: 2/26/2018 Pages: 5
Consent Agreement

3 **PU-17-457** Filed: 2/26/2018 Pages: 5
Consent Agreement

Public Service Commission Staff
John Schuh, Legal Counsel

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	Case No. PU-17-457
)	 PU-17-458
)	 PU-17-459
vs.)	
)	CONSENT AGREEMENT
Wagner Construction, Inc.,)	
)	
Respondent .)	

Preliminary Statement

This Consent Agreement is entered into by and between Wagner Construction, Inc. (Wagner) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket Nos. PU-17-457, PU-17-458 and PU-17-459.

On November 8, 2017, the Commission received a ND One-Call Complaint from Montana-Dakota Utilities (MDU) under Case No. PU-17-457. The complaint alleged a violation by Wagner of North Dakota Century Code section 49-23-05(5) for failing to conduct excavation in a careful and prudent manner. North Dakota Century Code section 49-23-05(5) provides that to avoid damage and to minimize interference a ticket holder shall "Conduct the excavation in a careful and prudent manner."

On November 8, 2017, the Commission received a ND One-Call Complaint from MDU under Case No. PU-17-458. The complaint alleged a violation by Wager of North Dakota Century Code section 49-23-04(1) for failure to contact the notification center and provide an excavation or location notice before beginning an excavation. North Dakota

Century Code section 49-23-04(1) provides that "Except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice before beginning any excavation.

On November 8, 2017, the Commission received a ND One-Call Complaint from MDU under Case No. PU-17-459. The complaint alleged a violation by Wager of North Dakota Century Code section 49-23-05(5) for failing to conduct excavation in a careful and prudent manner.

Having investigated the alleged violations, Staff believes that Wagner violated North Dakota Century Code section 49-23-05(5) in Case Nos. PU-17-457 and PU-17-459, and North Dakota Century Code section 49-23-04(1) in Case No. PU-17-458.

Wagner and Staff engaged in good faith settlement discussions resulting in this Consent Agreement. Having agreed that settlement of these proceedings 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 Wagner agree to the following, subject to the approval and acceptance of the Commission:

1. Wagner violated North Dakota Century Code section 49-23-05(5) in Case Nos. PU-17-457 and PU-17-459 by failing to conduct its excavation in a careful and prudent manner.
2. Wagner violated North Dakota Century Code section 49-23-04(1) in Case No. PU-17-458 by failing to contact the notification center and provide an excavation or location notice before beginning an excavation.
3. Wagner agrees to be assessed a civil penalty of \$500 in Case No. PU-17-457,

\$1100 in Case No. PU-17-458 and \$5400 in Case No. PU-17-459 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. Wagner 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, Wagner 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 Wagner and bind Wagner for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 24th day of February, 2018

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

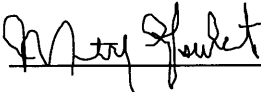
By: _____

John M. Schuh

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

Dated this 26th day of February, 2018

Wagner Construction, Inc.

By: 

{Marten Goulet, Chief Financial Officer}