

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.”

IV

North Dakota Century Code section 49-23-04(6)(a) provides: “An operator with underground facilities within the area of a location request shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator within the location period or as agreed by the parties.”

North Dakota Century Code section 49-23-04(6)(b) provides: “For purposes of this section, the approximate horizontal location of the underground facilities is a strip of land two feet [60.96 centimeters] on either side of the underground facilities. An operator of a facility required to be locatable is responsible for the costs of location. If an excavator is unable to locate a facility within two feet on either side of the operator's facility location markings and requests assistance from the operator to locate the facility, but the operator fails to provide the requested assistance within a reasonable time, the operator is responsible for the excavator's reasonable costs incurred to locate the facility. This subdivision does not apply to an underground facility to convey water installed before August 1, 2013.”

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.

V

On October 30, 2018, the Commission received a ND One-Call Complaint from Mr. Colby. The complaint alleges a violation by Verendrye of North Dakota Century Code section 49-23-04(6)(b) of the One-Call Excavation Notice System by failing to mark its underground facility within 24 inches horizontally.

VI

Mr. Colby provided an excavation notice to the North Dakota Once Call Notification Center (NDOC) on July 25, 2018, with work to begin in the area cited in the complaint to begin on July 28, 2018. NDOC assigned ticket number 18090429 to the excavation notice, which indicates the type of work is 'putting in wooden posts'. Pursuant to N.D.C.C. § 49-23-04(6)(g), the expiration date for the locate ticket was August 18, 2018.

VII

On July 29, 2018, Mr. Colby struck a 15Kv Verendrye underground electric line in a location that was greater than 24" from Verendrye's markings. Mr. Colby immediately notified Verendrye of the damage.

VIII

There was a risk of injury or death to Mr. Colby created by Verendrye by not locating its underground facilities accurately.

IX

On November 1, 2018, Commission staff issued a letter informing Verendrye of Mr. Colby's complaint filing, and requested a response by November 15, 2018. Verendrye's November 15, 2018 response affirmed it received the locate ticket, was the operator of the damaged facilities, and that the underground facilities were not located within 24 inches horizontally.

X

There was no agreement between Mr. Colby and Verendrye under North Dakota Century Code section 49-23-04(1) prior to excavation that would relieve Verendrye of its obligation to mark its underground facilities within 24 inches horizontally.

XI

Verendrye violated North Dakota Century Code section 49-23-04(6)(b) by failing to mark its underground facility within 24 inches horizontally.

XII

The North Dakota Public Service Commission Damage Prevention Plan provides:

D PROPOSED CIVIL PENALTIES:

1. The following criteria must be used by Commission staff to determine if a civil penalty should be proposed when filing a formal complaint:
 - a. The nature, circumstances and severity of the complaint;
 - b. The degree of suspected fault on the part of the respondent;
 - c. The respondent's history of prior violations or complaints;

- d. The respondent's ability to pay;
- e. Any good faith effort by the respondent in attempting to achieve compliance; and
- f. The effect the penalty may have on the respondent's ability to continue in business.

XIII


The Respondent must serve an answer to this complaint upon the Complainant and the Commission within twenty days after service of the complaint, or the Commission may deem the complaint to be admitted.

Relief Requested

Based on the foregoing, Staff seeks the following relief:

- 1. That the Commission find Verendrye violated North Dakota Century Code ch.49-23 with the One Call requirements enumerated in North Dakota Century Code section 49-23-04(6)(b).
- 2. That the Commission impose an appropriate civil penalty up to \$25,000, but at least \$10,000.
- 3. Such other relief that the Commission finds just and proper.

Dated this 2nd day of December, 2019


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