

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Verendrye Electric Cooperative, Inc.
Damage Prevention Enforcement

Case No. PU-18-374

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Date

Appearances

Commissioners Randy Christmann, Julie Fedorchak and Brian Kroshus.

Brian Johnson, Special Assistant Attorney General, appearing on behalf of the Public Service Commission Advocacy Staff.

Randy Hauck, General Manager, Verendrye Electric Cooperative, Inc. 615 Highway 52W, Velva, ND 58790-7417, appearing on behalf of Verendrye Electric Cooperative, Inc.

John Schuh, General Counsel, North Dakota Public Service Commission, 600 East Boulevard, Bismarck, North Dakota 58505, as Advisory Counsel.

Timothy J. Dawson, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street, Suite 303, Bismarck, North Dakota 58503, as Procedural Hearing Officer.

Preliminary Statement

On October 30, 2018, the North Dakota Public Service Commission (Commission) received a North Dakota One-Call (NDOC) Complaint from Warren Colby (Mr. Colby) of Voltaire. The NDOC Complaint alleged Verendrye Electric Cooperative, Inc. (Verendrye) failed to mark its underground facility within 24 inches horizontally, in violation of North Dakota Century Code section 49-23-04(6)(b).

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.

On December 2, 2019, Commission Advocacy Staff (Advocacy Staff) filed a Formal Complaint alleging that Verendrye violated North Dakota Century Code section 49-23-04(6)(b) by failing to mark its underground facility within 24 inches horizontally.

On February 19, 2020, the Commission found the Formal Complaint stated a *prima facie* case and served the complaint upon Verendrye.

On May 27, 2020, the Commission issued a Notice of Hearing on the complaint, scheduling the hearing for July 21, 2020, at 8:00 am CT in the Commission Hearing Room, State Capitol, 12th Floor, Bismarck, North Dakota 58505.

The notice identified the following issues to be considered:

1. Whether Verendrye Electric Cooperative, Inc. violated North Dakota Century Code chapter 49-23, the North Dakota One-Call law in Case No. PU-18-374
2. If a violation is found, whether a civil penalty should be assessed and in what amount, and
3. Whether there is any other relief the Commission finds just and proper?

On July 21, 2020, the public hearing was held as scheduled.

Having allowed all interested persons an opportunity to be heard and having heard, reviewed, and considered all testimony and evidence presented, the Commission makes the following:

Findings of Fact

1. Verendrye Electric Cooperative, Inc. is a North Dakota Cooperative Association with offices located at 615 Highway 52 West, Velva, ND 58790-7417.
2. Warren Colby is an individual/person who resides at 846 44th St N, Voltaire, ND 58501.
3. On July 25, 2018, Mr. Colby contacted the One-Call notification center and placed an excavation notice for his property at 846 44th St N, Voltaire, ND. The notification center assigned ticket number 18090429 to the excavation notice. The ticket states that the type of work was installing wooden fence posts, and the work to begin date was July 28, 2018.
4. On or about July 28, 2018, Mr. Colby began his excavation at the location specified in the excavation notice. During this excavation Mr. Colby struck an unjacketed concentric neutral primary electric cable in excess of 24 inches from the marks placed by Verendrye.
5. Mr. Colby testified that he was using a traditional fiberglass two handled post hole digger to complete his excavation. Upon reaching a depth of 2 to 2.5 feet, Mr. Colby struck

the inaccurately marked cable. He stated that the next thing he knew he was standing 5 to 6 feet away from the hole, which was then emitting smoke and fire. At that time, he contacted Verendrye to notify them of the incident.

6. Mr. Colby testified that he was told by a doctor that he was electrocuted, he just was not killed. He has some lingering shaking in his hands and lost some fillings in his teeth. He was never charged by Verendrye for the damages.

7. Victor Schock testified that he believes the recommended penalty of \$10,000 is justified based on the fact that Mr. Colby could have been more seriously injured or even killed.

8. Randy Hauck testified that the line was mis located (1:22:55 of audio recording).

9. Tim Krumwiede testified that in his original response letter to this complaint, that Verendrye's locate marks were not within 24" of the underground facility.

10. Troy Holzworth testified that based on the pictures, he believes the line was mis marked due to human error (2:55 of audio recording).

Conclusions of Law

1. The Commission has jurisdiction over this proceeding.

2. Verendrye failed to mark its underground facility within 24 inches horizontally. Consequently, Verendrye violated North Dakota Century Code chapter 49-23-04(6)(b).

From the foregoing Findings of Fact and Conclusions of Law, the Commission now makes its:

Order

The Commission orders:

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

2. Verendrye shall pay a total fine of \$10,000 payable to the North Dakota Public Service Commission within ten business days of the service of this Order.

PUBLIC SERVICE COMMISSION

**Julie Fedorchak
Commissioner**

**Brian Kroshus
Chairman**

**Randy Christmann
Commissioner**