

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Gladen Construction
Damage Prevention Enforcement**

Case No. PU-18-420

**Public Service Commission
Gladen Construction
Damage Prevention Enforcement**

Case No. PU-18-421

ORDER ON CONSENT AGREEMENT

November 21, 2019

Preliminary Statement

On December 4, 2018, the Commission received a ND One-Call Complaint from Xcel Energy, Inc. (Xcel) alleging a violation by Gladen Construction, Inc. (Gladen) of North Dakota Century Code (N.D.C.C.) section 49-23-05(5), Case No. PU-18-420.

On January 2, 2019, the Commission sent a letter to Gladen enclosing the December 6, 2018 N.D. One-Call Complaint in Case No. PU-18-420.

On January 14, 2019, the Commission received Gladen's response to the complaint, Case No. PU-18-420.

On December 4, 2018, the Commission received a ND One-Call Complaint from Xcel alleging violations by Gladen of North N.D.C.C. section 49-23-05(5), Case No. PU-18-421.

On January 2, 2019, the Commission sent a letter to Gladen enclosing the December 4, 2018 N.D. One-Call Complaint in Case No. PU-18-421.

On January 14, 2019, the Commission received Gladen's response to the complaint in Case No. PU-18-421.

On October 28, 2019, a Consent Agreement between Advocacy Staff (Staff) and Gladen was filed for the resolution of the ND One Call Complaints in Case Nos. PU-18-420 and PU-18-421.

7 **PU-18-421** Filed: 11/21/2019 Pages: 7
Order on Consent Agreement

Public Service Commission

Case Nos. PU-18-420 and PU-18-421
Order on Consent Agreement
Page 1 of 3

7 **PU-18-420** Filed: 11/21/2019 Pages: 7
Order on Consent Agreement

Public Service Commission

Discussion

Gladen Construction, Inc. is a foreign corporation with principal address of 40739 US 71, Laporte, MN 56461-4278.

In Case No. PU-18-420, Xcel alleges a violation by Gladen of N.D.C.C. section 49-23-05(5) for failure to conduct the excavation in a careful and prudent manner. The complaint alleges that Gladen failed to conduct the excavation in a careful and prudent manner and hit an underground natural gas facility. Xcel estimated the value of the damage at \$2,736. No customers were affected.

Having investigated the alleged violation in Case No. PU-18-420, Staff concluded Gladen violated N.D.C.C. 49-23-04(3)(g) rather than N.D.C.C. 49-23-05(5).

N.D.C.C. 49-23-04(3)(g), provides that "[a]n excavator may not use a location more than twenty-one days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected."

In Case No. PU-18-421, Xcel alleges a violation by Gladen of N.D.C.C. section 49-23-05(5) for failure to conduct the excavation in a careful and prudent manner. The complaint alleges that Gladen failed to conduct the excavation in a careful and prudent manner and hit an underground natural gas facility. Xcel estimated the value of the damage at \$337. One customer was affected.

N.D.C.C. section 49-23-05(5) provides that, to avoid damage and to minimize interference with underground facilities, a ticket holder shall "[c]onduct the excavation in a careful and prudent manner."

Having investigated the alleged violation in Case No. PU-18-421, Staff concluded that Gladen violated N.D.C.C. section 49-23-05(5) for failing to conduct the excavation in a careful and prudent manner.

Gladen and Staff engaged in good faith settlement discussions resulting in a Consent Agreement intended to avoid further administrative proceedings or litigation.

Gladen agrees to be assessed a civil penalty of \$2,400 in Case No. PU-18-420 and \$1,000 in Case No. PU-18-421 for a total of \$3,400. Gladen agrees to remit \$2,400 of the \$3,400, payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving the Consent Agreement. The remaining \$1,000 civil penalty is suspended on the condition that Gladen commits no further violations of the North Dakota One call Law (North Dakota Century Code Chapter 49-23) within five years after the date of the Order.

Having considered this matter, the Commission finds the Consent Agreement filed on October 28, 2019, is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Consent Agreement of Gladen and Staff, filed October 28, 2019, is approved. A copy of the Consent Agreement is attached to and made a part of the Order.
2. Gladen is assessed a civil penalty of \$2,400 in Case No. PU-18-420.
3. Gladen is assessed a civil penalty of \$1,000 in Case No. PU-18-421.
4. Gladen shall remit \$2,400 civil penalty, payable to the North Dakota Public Service Commission within ten business days of service of the Order. The remaining \$1,000 civil penalty is suspended on the condition that Gladen commits no further violation of North Dakota Century Code chapter 49-23 within five years of the date of the Order.
5. In the event the Commission finds Gladen violated North Dakota Century Code chapter 49-23 within five years of the date of this Order, Gladen shall remit the suspended portion of the penalty, \$1,000, within the time ordered by the Commission, and in addition, any penalties assessed for subsequent violation.

PUBLIC SERVICE COMMISSION


Julie Fedorchak
Commissioner


Brian Kroshus
Chairman


Randy Christmann
Commissioner

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	Case No. PU-18-420
)	PU-18-421
vs.)	
Gladen Construction, Inc.,)	CONSENT AGREEMENT
)	
Respondent .)	

Preliminary Statement

This Consent Agreement is entered into by and between Gladen Construction, Inc. (Gladen) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket Nos. PU-18-420 and PU-18-421. (Cases PU-18-420 and PU-18-421 are collectively referred to as the "Cases.")

Case No. PU-18-420: On December 4, 2018, the Commission received a ND One-Call Complaint from Xcel Energy, Inc. (Xcel). The complaint alleged a violation by Gladen of North Dakota Century Code section (N.D.C.C.) 49-23-05(5) for failure to conduct the excavation in a careful and prudent manner.

Case No. PU-18-421: On December 4, 2018, the Commission received a ND One-Call Complaint from Xcel Energy, Inc. (Xcel). The complaint alleged a violation by Gladen

of N.D.C.C. 49-23-05(5) for failure to conduct the excavation in a careful and prudent manner.

N.D.C.C.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."

N.D.C.C.49-23-04(3)(g) provides that "An excavator may not use a location more than twenty-one days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected."

Having investigated the alleged violations, Staff believes that Gladen violated N.D.C.C. 49-23-04(3)(g) in Case No. PU-18-420 and N.D.C.C. 49-23-05(5) in Case No. PU-18-421.

Gladen 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 Gladen agree to the following, subject to the approval and acceptance of the Commission:

1. Gladen violated N.D.C.C. 49-23-04(3)(g) in Case No. PU-18-420 by excavating in a location more than 21 days after the planned excavation date.
2. Gladen violated N.D.C.C. 49-23-05(5) in Case No. PU-18-421 by failing to conduct the excavation in a careful and prudent manner.
3. Gladen agrees to be assessed a civil penalty of \$2,400 in Case No. PU-18-420 and \$1,000 in Case No. PU-18-421 for a total of \$3,400. Gladen agrees to remit \$2,400 of the \$3,400, payable to the North Dakota Public Service Commission

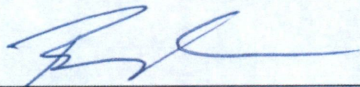
within ten business days of service of an Order accepting or approving the Consent Agreement. The remaining \$1,000 civil penalty is suspended on the condition that Gladen commits no further violations of the North Dakota One call Law (North Dakota Century Code Chapter 49-23) within five years after the date of the Order. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violations alleged in the Cases.

4. In the event the Commission finds Gladen violated the North Dakota One Call Law within five years of the date of the Order, Gladen shall remit the suspended penalty, within the time ordered by the Commission, in addition to any additional fines or penalties imposed for the subsequent violation.
5. If within five years of the date of the Order there is no subsequent violation of the North Dakota One Call Law by Gladen, the penalty is withdrawn.
6. Gladen consents to the filing of the Consent Agreement and an Order in the Cases and hereby waives any further procedural requirements with respect to the Order's issuance. Provided the Public Service Commission adopts this Consent Agreement and issues an Order consistent with it, Gladen understands and agrees in the Cases 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.

7. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Agreement and Order.
8. 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.
9. The undersigned is authorized to act on behalf of Gladen and bind Gladen for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 28th day of October, 2019


PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By: 

Brian Johnson
Special Assistant Attorney General Bar ID 07397
North Dakota Public Service Commission
600 East Boulevard Avenue Dept. 408
Bismarck ND, 58505
701-328-2407

Dated this 15 day of October, 2019

Gladen Construction, Inc.

By: 
{insert name and title}