



Public Service Commission  
State of North Dakota

COMMISSIONERS

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June 21, 2021

Mr. Steve Kahl  
Executive Secretary  
ND Public Service Commission  
600 E Boulevard Avenue Dept. 408  
Bismarck, ND 58505-0480

**via Hand Delivery**

Re: Case No. PU-20-368  
Public Service Commission  
Gladden Construction Inc.  
Damage Prevention Enforcement

Dear Mr. Kahl:

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

Best Regards,

Brian Johnson  
Legal Counsel

Enclosure

- 11 PU-18-421 Filed 06/21/2021 Pages: 5  
Consent Agreement  
Public Service Commission  
Brian Johnson, Legal Counsel
- 11 PU-18-420 Filed 06/21/2021 Pages: 5  
Consent Agreement  
Public Service Commission  
Brian Johnson, Legal Counsel

**4** **PU-20-368** Filed: 6/21/2021 Pages: 5  
**Consent Agreement**

Public Service Commission  
Brian Johnson, Legal Counsel

**BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA**

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|                                   |   |                           |
|-----------------------------------|---|---------------------------|
| <b>PUBLIC SERVICE COMMISSION,</b> | ) |                           |
|                                   | ) |                           |
| <b>Complainant,</b>               | ) | <b>Case No. PU-20-368</b> |
| <b>vs.</b>                        | ) |                           |
|                                   | ) | <b>CONSENT AGREEMENT</b>  |
| <b>Gladen Construction, Inc.,</b> | ) |                           |
| <b>Respondent .</b>               | ) |                           |

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**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 No. PU-20-368.

On August 18, 2020, the Commission received a ND One-Call Complaint from Excel Energy (Excel). The complaint alleged a violation by Gladen of North Dakota Century Code (NDCC) section 49-23-05(5) for failure to conduct its excavation in a careful and prudent manner.

On August 19, 2020, Commission staff issued a letter informing Gladen of Excel's complaint filing and requested a response by September 2, 2020. Gladen's June 4, 2021 response agreed that Gladen struck Xcel's natural gas line.

On June 23, 2020 Gladen personnel provided and excavation notice to the North Dakota One Call Notification Center (NDOC), with work to begin on June 26, 2020. The NDOC assigned locate ticket number 20073975 to the excavation notice, which indicates

the work was utility replacement and road grading at the intersection of 35<sup>th</sup> St SE and 15<sup>th</sup> Ave N, Casselton, ND. The expiration date for the ticket was July 17, 2020.

On July 17, 2020, Gladen began an excavation as defined in NDCC section 49-23-01(7) while performing utility replacement and road grading at the location cited in the excavation notice. As a result of this excavation, damage was caused to Xcel's 6" plastic natural gas main line.

NDCC 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".

Having investigated the alleged violation, Staff believes that Gladen violated NDCC section 49-23-05(5).

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 NDCC section 49-23-05(5) by failing to conduct its excavation in a careful and prudent manner.
2. Gladen agrees to be assessed a civil penalty of \$5,900. Gladen agrees to remit \$3,900 of the \$5,900, payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving the Consent Agreement (Order). The remaining \$2000 civil penalty is suspended on

the condition that Gladen commits no further violation of NDCC section 49-23 within five years of the date of the Order

3. In the event the Commission finds Gladen violated the NDCC section 49-23 within five years of the date of the Order, Gladen shall remit the suspended portion of the penalty, within the time ordered by the Commission, in addition to any additional fines or penalties imposed for the subsequent violation.
4. If within five years of the date of the Order there is no subsequent violation of the NDCC section 49-23 by Gladen, the remaining \$2000 penalty is withdrawn.
5. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violation alleged in the Case.
6. Gladen consents to the filing of the Consent Agreement and an Order 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 to waive all rights to contest the violation, 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, including all rights to administrative or judicial hearings or appeals.
7. Pursuant to the Order approved by the Commission in case nos. PU-18-420 and PU-18-421, Gladen must remit the suspended portion of the penalty in those cases, \$1000. The \$1000, payable to the North Dakota Public Service

Commission within ten business days of service of an Order accepting or approving the Consent Agreement in this case.

8. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement and Order.
9. 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.
10. 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 21<sup>st</sup> day of June, 2021

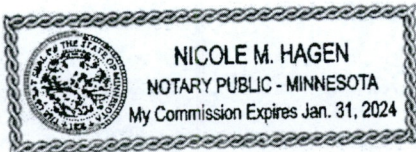
PUBLIC SERVICE COMMISSION  
ADVOCACY STAFF – DAMAGE PREVENTION

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 16 day of June, 2021

Gladen Construction, Inc.



By: \_\_\_\_\_

Name: \_\_\_\_\_