

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	Case No. PU-19-303
)	
Complainant,)	NOTICE OF MOTION FOR
vs.)	ORDER OF DEFAULT
)	
Hanson’s Concrete Masonry &)	
Landscaping, LLC)	
)	
Respondent.)	

TO: Hanson’s Concrete Masonry & Landscaping, LLC, 12451 30th St NW, Watford City, ND 58854.

PLEASE TAKE NOTICE that the Public Service Commission, Advocacy Staff, Movant in the above proceeding, respectfully moves for an order declaring Hanson’s Concrete Masonry & Landscaping, LLC in default. The motion is attached to this notice and by reference made a part hereof.

YOUR ARE HEREWITH NOTIFIED that the Notice of Motion and Motion for Judgment of Default has been submitted pursuant to N.D.C.C. § 28-32-21(e) and N.D. Admin. Code art. 69-02. The Public Service Commission may deem the Formal Complaint admitted and may enter an order in default as the facts and law may warrant. If the Public Service Commission rules in favor of Advocacy Staff’s motion, you have (7) days after service of the default notice, order and grounds to file a written motion with the Public Service Commission requesting that the default order be vacated and stating the grounds relied upon.

Bismarck, North Dakota, this 10th day of March, 2021.



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

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	Case No. PU-19-303
)	
Complainant,)	
)	
vs.)	MOTION FOR
)	ORDER OF DEFAULT
Hanson’s Concrete Masonry &)	AND MEMORANDUM OF
Landscaping, LLC)	LAW
)	
Respondent.)	

MOTION FOR ORDER OF DEFAULT

Public Service Commission Advocacy Staff (“Advocacy Staff”) respectfully seeks an order in default against Respondent, Hanson’s Concrete Masonry & Landscaping, LLC. In support of the motion, Advocacy Staff states the following:

MEMORANDUM

Pursuant to N.D.C.C. § 28-32-21(e) and N.D. Admin. Code § 69-02-02-03(1), a Formal Complaint “may inform the respondent that an answer to the complaint must be served upon the complainant and the agency with which the complaint is filed within twenty days after service of the complaint, or the agency may deem the complaint to be admitted.” On September 10, 2020, Hanson’s Concrete Masonry & Landscaping, LLC received the Formal Complaint filed with the Commission via the McKenzie County Sheriff’s Office. Hanson’s Concrete Masonry & Landscaping, LLC failed to respond to the Formal Complaint within the time allotted under N.D.C.C. § 28-32-21(e). Having failed to answer the complaint, the Commission may deem the

Formal Complaint to be admitted by Hanson's Concrete Masonry & Landscaping, LLC and "enter an order in default as the facts and law may warrant." N.D.C.C. § 28-32-21(e).

BACKGROUND

On August 27, 2019, the Commission received a ND One-Call Complaint from Paul Riely with Montana-Dakota Utilities Co. (MDU). The complaint alleges a violation by Hanson's Concrete Masonry & Landscaping, LLC (Hanson's) of North Dakota Century Code section 49-23-04(1) of the One-Call Excavation Notice System by failing to provide an excavation notice to the NDOC Notification Center at least forty-eight hours before beginning its excavation. *See Attached ND One-Call Complaint.* On August 28, 2019, Commission staff issued a letter informing Hanson's of MDU's complaint filing and requested a response by September 12, 2019. Having received no response to the letter, staff attempted to contact Hanson's by leaving voicemails on December 2, 2019 and February 26, 2020. No response to the voicemails has been received as of March 10, 2021. On July 8, 2020 the Commission appointed Advocacy Staff to the case effective June 23, 2020.

On June 23, 2020, based on its investigation, Advocacy Staff filed a Formal Complaint alleging Hanson's violated N.D.C.C. § 49-23-04(1) of the One-Call Excavation Notice System by failing to provide an excavation notice to the NDOC Notification Center at least forty-eight hours before beginning its excavation. *See Attached Formal Complaint.* On July 23, 2020, the Commission found the Formal Complaint stated a *prima facie* case. Service of the Formal Complaint was initiated on September 4, 2020 via a request to the McKenzie County Sheriff's Office to Hanson's Concrete Masonry & Landscaping, LLC, 1201 12th St SE, Suite B, Watford

City, ND 58854. A sheriff's return service receipt was signed by Renee Thorgramson on September 10, 2020. *See Attached Sheriff's Return.*

In Section X of the Formal Complaint, Hanson's was informed that "[t]he 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." Having received no answer to the Formal Complaint by September 30, 2020, the Commission may deem the Formal Complaint to be admitted and enter an Order of Default pursuant to N.D.C.C. § 28-32-21(e). As of March 10, 2021, Hanson's has not responded and has not responded to any attempt by Advocacy Staff to communicate.

CONCLUSION

For these reasons, Advocacy Staff respectfully requests the Public Service Commission enter an Order of Default against Hanson's, impose an appropriate civil penalty up to \$25,000, but at least \$1500, and such other relief that the Commission finds just and proper.

Dated: March 10, 2021

Respectfully,



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



ND ONE-CALL COMPLAINT

Public Service Commission

SFN 59067 (5-17)

To allege a violation of the One-Call Excavation Notice System Law: North Dakota Century Code Chapter 49-23

PART A – WHO IS SUBMITTING THIS COMPLAINT (COMPLAINANT)

Company/Person Montana-Dakota Utilities Co.	Street Address 121 W 8th Ave	City Williston	State and Zip Code ND 58801
Telephone and Cell Phone Number 701-572-1614/701-516-4357	Email Address paul.riely@mdu.com		Date 14 August 2019
<input checked="" type="checkbox"/> Complainant is willing and able to testify on the complaint if matter goes to formal hearing			

PART B – WHO VIOLATED THE ONE-CALL REGULATIONS (RESPONDENT)

Company/Person Hanson's Concrete Masonry & Landscaping LLC	Street Address 205 Park Ave W	City Watford City	State and Zip Code ND 58854
Telephone and Cell Phone Number 612-701-9489	Email Address ddoghanson@gmail.com		

PART C – ALLEGED VIOLATION

<input type="checkbox"/> Operator failed to provide or update the information provided to the notification center on a timely basis <input checked="" type="checkbox"/> Excavator failed to provide excavation or location notice at least 48 hours before beginning any excavation <input type="checkbox"/> Excavator failed to provide required information in excavation or location notice <input type="checkbox"/> Notification center failed to transmit the notice to every operator that has an underground facility in the area of the excavation <input type="checkbox"/> Notification center failed to inform the excavator of the names of operators of underground facilities in the area <input type="checkbox"/> Operator failed to locate and mark underground facility within 48 hours <input checked="" type="checkbox"/> Excavation started prior to underground facility locate <input type="checkbox"/> Operator failed to mark underground facility within 24 inches horizontally <input type="checkbox"/> Excavator failed to renew excavation or location request prior to the expiration of the twenty-one-day period <input checked="" type="checkbox"/> Excavator failed to conduct the excavation in a careful and prudent manner to avoid damage of underground facilities <input type="checkbox"/> Excavator failed to maintain the markings during excavation <input type="checkbox"/> Other (identify the specific section of NDCC Chapter 49-23) _____
Location of Violation: 109 3rd St SW, Watford City, ND
Date and Time of Violation: on or about 12:52 pm on 12 August 2019
Description (summarize the observations on which you rely to allege the violation) <i>If more space is required, please provide the description on a separate page.</i> Contractor was digging at the above noted address. They came in contact with a 1" steel service line damaging it underneath a concrete patio adjacent to a structure. This resulted in a uncontrolled release of natural gas that migrated into the structure. Upon investigation 45% gas was found in the interior of the structure. The structure was evacuated, and the power was shut off the the area, causing an electrical interruption to approximately 8 customers for approximately 3 hours, with the exception of the structure at the damage location which was without power for 12 hours. The Fire Department was on scene, and aided in ventilating the structure. The gas escaped the system for approximately 37 minutes, while the steel service was safely retired at the main line. Montana-Dakota Utilities had personnel on site monitoring the area, and ground saturation levels for approximately 14 hours. At 2:00 AM on 13 August, the Montana-Dakota Utilities personnel were released as the scene was made safe.

PART D – DAMAGE

Fatalities 0	Injuries 0	In-patient Hospitalization 0
Underground facility type(s) and Operator(s) affected: 1" steel Natural Gas Service Line		
Estimated Value of Damage (damage as defined under NDCC Chapter 49-23): \$ \$2880.58		Number of Customers Affected 8
Other impact of event:		
Please attach photos of Event Area or Damaged Facility		

PART I – SIGNATURE

Signature of Person Filing Complaint Paul W Riely	Date 8/27/2019
--	-------------------

Submit

If the "Submit" function is not working properly, please print the completed form and then either **email to** ndpsc@nd.gov, **fax to** 701-328-2410 or **send to** Public Service Commission, 600 E Boulevard Ave Dept 408, Bismarck ND 58505-0480.

Telephone: (701) 328-2400

1 PU-19-303 Filed 08/27/2019 Pages: 1
North Dakota One-Call Complaint
Montana-Dakota Utilities Co.
Paul Riely

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

Public Service Commission
Hanson's Concrete Masonry &
Landscaping, LLC
Damage Prevention Enforcement

Case No. PU-19-303

Public Service Commission,)	
Complainant,)	
)	
vs.)	
)	Complaint
Hanson's Concrete Masonry & Landscaping, LLC,)	
Respondent.)	

The Public Service Commission of North Dakota (Commission), by and through Advocacy Staff (Staff), for its complaint against Hanson's Concrete Masonry & Landscaping, LLC, alleges and shows the following:

I

Hanson's Concrete Masonry & Landscaping, LLC (Hanson's) is a registered North Dakota limited liability company with offices located at 205 Park Ave W, Watford City, ND 58854-3265.

II

Montana-Dakota Utilities Co. (MDU) is a foreign corporation authorized to do business in North Dakota.

III

North Dakota Century Code (N.D.C.C.) 49-23-04(1) provides:

Except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice before beginning any excavation. An excavation begins the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice.

North Dakota Century Code (N.D.C.C.) 28-32-22 provides:

Unless otherwise prohibited by specific statute or rule, informal disposition may be made of any adjudicative proceeding, or any part or issue thereof, by stipulation, settlement, waiver of hearing, consent order, default, alternative dispute resolution, or other informal disposition, subject to agency approval. Any administrative agency may adopt rules of practice or procedure for informal disposition if such rules do not substantially prejudice the rights of any party. Such rules may establish procedures for converting an administrative matter from one type of proceeding to another type of proceeding.

North Dakota Century Code (N.D.C.C.) 49-07-01.1 provides:

Any person who violates any statute, commission order, or commission rule which applies to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, 24-09, 32-25, and 51-05.1, titles 60 and 64, and title 49 except for chapters 49-22 and 49-23, shall, in addition to any other penalty provided, be subject to a civil penalty of not to exceed five thousand dollars. A 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. The commission shall develop policies for the assessment of penalties under chapter 49-23 which will take into consideration the severity of damages and the conduct of the offender. The civil penalty may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.

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.

IV

On August 27, 2019, the Commission received a ND One-Call Complaint from Paul Riely, Field Operations Supervisor for MDU. The complaint alleges a violation by Hanson's of N.D.C.C. 49-23-04(1) of the One-Call Excavation Notice System by failing to provide an excavation notice to the NDOC Notification Center at least forty-eight hours before beginning its excavation.

V

On August 28, 2019, Commission staff issued a letter informing Hanson's of MDU's complaint filing, and requested a response by September 12, 2019, attached as Exhibit 1. As of June, 23, 2020, the commission had not received a response, despite having left voicemails for Hanson's on December 2, 2019 and February 26, 2020.

VI

As alleged by MDU's complaint, on August 12, 2019 at approximately 12:52 pm, Hanson's began an excavation as defined in N.C.C.C. 49-23-01(7) while performing landscaping at 109 3rd st SW, Watford City, North Dakota. As a result of this excavation, damage was caused to MDU's 1" steel natural gas service line. MDU alleges that the cost to repair its facilities was approximately \$2880.58.

VII

Based on its investigation Staff determined that Hanson's personnel provided an excavation notice to the North Dakota One Call Notification Center (NDOC) on August 12, 2019 at 10:35 am, with work to begin in the area cited in the complaint to begin on August 15, 2019. The NDOC assigned locate ticket number 19103114 to the excavation notice, which indicates the work was landscaping, attached as Exhibit 2. Under N.D.C.C. 49-23-04(3)(g), the expiration date for the locate ticket is September 5, 2019. On August 12, 2019 at approximately 12:52 pm, Hanson's personnel began an excavation to complete landscaping work. Hanson's notified MDU of the damage on August 12, 2019. Due to the location of the damage and resulting release of gas, power was shut off to the area resulting in 8 customers were affected with an outage of 3 hours.

Based on its investigation, Staff concluded that there was no agreement between Hanson's and MDU under N.D.C.C. 49-23-04(1) prior to excavation that would relieve Hanson's of its obligation to provide excavation notice at least forty-eight hours before the excavation.

Based on its investigation, Staff concluded that the excavation was not being made in a time of emergency under N.D.C.C. 49-23-04(4), allowing the excavator to give notification after the start of the excavation.

VIII

Hanson's violated N.D.C.C. 49-23-04(1) by failing to provide an excavation notice to the NDOC Notification Center at least forty-eight hours before beginning its excavation.

IX

The 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.

X

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. Answers must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure.

Prayer for Relief

Based on the foregoing, Staff seeks the following relief:

1. That the Commission find Hanson's Concrete Masonry & Landscaping, LLC in violation of N.D.C.C. chapter 49-23 for failing to comply with the One Call requirements enumerated in North Dakota Century Code section 49-23-04(1).
2. That the Commission impose an appropriate civil penalty up to \$25,000, but at least \$1500.
3. Such other relief that the Commission finds just and proper.

Dated this 23rd day of June, 2020.



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

and

Victor Schock
Public Utility Analyst
600 E Boulevard Ave – Dept 408
Bismarck, North Dakota 58505-0480
701-328-3397
Public Service Commission Advocacy Staff

VOUCHER ID 10910

PU-19-303

RECEIVED

SEP 14 2020

ND PSC



MCKENZIE COUNTY SHERIFF'S OFFICE v# 3251

1201 12th St SE, Suite B • Watford City, ND 58854

Matthew Johansen, Sheriff
Phone: (701) 842-6010
Fax: (701) 842-6455

Invoice

Printed on September 10, 2020

7100
621325

Billed To NORTH DAKOTA PUBLIC SERVICE COMMISSION
600 E BOULEVARD, DEPT 408
BISMARCK, ND 58505-0480

Net 30 days

Reference Civil Papers C20-00897; Serve On: HANSON'S CONCRETE MASONRY & LANDSCAPING, LLC
Return # 9830
Invoice # IN20-01020
Invoice Date 9/4/20
Due Date 10/4/20

Item	Disburse To	Hold From Disb.	Amount Owed	Amount Paid
Calculated Mileage Fee	MCKENZIE COUNTY TREASURER	No	\$20.00	\$0.00
Photocopy	MCKENZIE COUNTY TREASURER	No	\$28.00	\$0.00
Postage	MCKENZIE COUNTY TREASURER	No	\$0.65	\$0.00
Service Fee	MCKENZIE COUNTY TREASURER	No	\$20.00	\$0.00
			Total Owed	\$68.65
			Total Paid	\$0.00
			Uncollectible	\$0.00
			Remaining	\$68.65

Comments

MCKENZIE COUNTY SHERIFF'S OFFICE
1201 12TH ST SE, SUITE B
WATFORD CITY, ND 58854
Phone: (701) 842-6010
Fax: (701) 842-6455