

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Blue Stone Construction, Inc.
Damage Prevention Enforcement

Case No. PU-19-326

ORDER ON CONSENT AGREEMENT

January 8, 2020

Preliminary Statement

On September 26, 2019, the Commission received a ND One-Call Complaint from North Prairie Water District (North Prairie) alleging a violation by Blue Stone Construction, Inc. (Blue Stone) of North Dakota Century Code (N.D.C.C.) section 49-23-04(1).

On September 26, 2019, Commission Advocacy Staff (Staff) sent a letter to Blue Stone enclosing the September 26, 2019 ND One-Call Complaint.

On October 4, 2019, Blue Stone sent a response to the September 26, 2019 ND One-Call Complaint.

On December 5, 2019, a Consent Agreement, between Staff and Blue Stone was filed for the resolution of the ND One Call Complaint in Case No. PU-19-326.

Discussion

Blue Stone Construction, Inc. is a North Dakota corporation with a principal address of 6898 163rd Ave. SE, Sawyer, ND 58781.

North Prairie alleges a violation by Blue Stone of N.D.C.C. section 49-23-04(1) for failing to contact the notification center and provide an excavation or location notice at least 48 hours before beginning any excavation.

On September 25, 2019, Blue Stone personnel began an excavation without a ND One-Call ticket. The complaint did not indicate the estimated value of damage or whether any customers were affected.

N.D.C.C. section 49-23-04(1) provides that, "[e]xcept 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.”

Having investigated the alleged violation, Staff concluded that Blue Stone violated N.D.C.C. section 49-23-04(1).

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

Under the Consent Agreement, Blue Stone agrees to be assessed a civil penalty of \$1,000 with \$500 suspended on condition that Blue Stone commit no further violations of the North Dakota One Call Law (North Dakota Century Code Chapter 49-23) within five years after the date of this Order. Blue Stone will make \$500 payable to the North Dakota Public Service Commission within ten business days of an Order accepting or approving the Consent Agreement.

Having considered this matter, the Commission finds the Consent Agreement filed on December 5, 2019, is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Consent Agreement of Blue Stone Construction, Inc. and Commission Advocacy Staff, filed December 5, 2019, is approved. A copy of the Consent Agreement is attached to and made a part of the Order.
2. Blue Stone is assessed a civil penalty of \$1,000.
3. Blue Stone shall remit the \$500 civil penalty, payable to the North Dakota Public Service Commission within ten business days of service of the Order. The remaining \$500 civil penalty is suspended on the condition that Blue Stone commit no further violation of North Dakota Century Code chapter 49-23 within five years of the date of the Order.
4. In the event the Commission finds Blue Stone violated North Dakota Century Code chapter 49-23 within five years of the date of this Order, Blue Stone shall remit the

suspended portion of the penalty, \$500, 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-19-326
)	
vs.)	
)	CONSENT AGREEMENT
Blue Stone Construction, Inc.,)	
)	
Respondent.)	

Preliminary Statement

This Consent Agreement is entered into by and between Blue Stone Construction, Inc. (Blue Stone) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket No. PU-19-326.

On September 26, 2019, the Commission received a ND One-Call Complaint from Brady Carpenter at North Prairie Rural Water District. The complaint alleged a violation by Blue Stone of North Dakota Century Code section 49-23-04(1) for failure to provide an excavation or location notice at least 48 hours before beginning any excavation.

North Dakota Century Code section 49-23-04(1) provides that "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."

Having investigated the alleged violations, Staff believes that Blue Stone violated North Dakota Century Code section 49-23-04(1).

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

1. Blue Stone violated North Dakota Century Code section 49-23-04(1) by failing to provide an excavation or location notice at least 48 hours before beginning any excavation.
2. Blue Stone agrees to be assessed a civil penalty of \$1000. Blue Stone agrees to remit \$500 of the \$1000, payable to the North Dakota Public Service Commission within ten business days of service of an Order. The remaining \$500 civil penalty is suspended on the condition that Blue Stone commits no further violation of North Dakota Century Code 49-23 within five years of the date of the Order.
3. Blue Stone 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, Blue Stone understands and agrees 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.

4. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Agreement and Order.
5. 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.
6. The undersigned is authorized to act on behalf of Blue Stone and bind Blue Stone for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 5th day of December, 2019

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By: _____


Brian Johnson
Advocacy Counsel
12th Floor, Dept. 408
600 Boulevard Ave.
Bismarck, ND 58505-0480

Dated this 4 day of December, 2019

Blue Stone Construction, Inc.

By: _____


Leif Anderson, President

{insert name and title}