

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Public Service Commission**  
**Wagner Construction, Inc.**  
**Damage Prevention Enforcement**

**Case No. PU-19-330**

**Public Service Commission**  
**Wagner Construction, Inc.**  
**Damage Prevention Enforcement**

**Case No. PU-20-273**

**CORRECTED ORDER ON CONSENT AGREEMENT**

**August 26, 2020**

**Preliminary Statement**

On August 14, 2019, the Commission received a ND One-Call Complaint from Montana-Dakota Utilities Co. (MDU) alleging a violation by Wagner Construction, Inc. (Wagner) of North Dakota Century Code (N.D.C.C.) section 49-23-05(5), Case No. PU-19-330.

On October 2, 2019, Commission Advocacy Staff (Staff) sent a letter to Wagner enclosing the August 14, 2019 ND One-Call Complaint.

On October 23, 2019, Wagner sent a response to the August 14, 2019 ND One-Call Complaint.

On June 18, 2020, the Commission received a ND One-Call Complaint from Midcontinent Communications (Midco) alleging a violation of Wagner of N.D.C.C. section 49-23-05(5), Case No. PU-20-273.

On June 19, 2020, Staff sent a letter to Wagner enclosing the June 18, 2020 ND One-Call Complaint.

On July 6, 2020, Wagner sent a response to the June 18, 2020 ND One-Call Complaint.

On July 13, 2020, Midco filed a response to Wagner's response to the June 18, 2020 ND One-Call Complaint.

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On July 14, 2020, a Consent Agreement, between Staff and Wagner was filed for the resolution of the ND One-Call Complaints.

### **Discussion**

Wagner Construction, Inc. is a foreign corporation with a principal address of 3151 Highway 53, Suite 1, International Falls, MN 56649-8969.

In the ND One-Call Complaints, MDU and Midco allege violations by Wagner of N.D.C.C. section 49-23-05(5) for failure to conduct excavations in a careful and prudent manner.

In Case No. PU-19-330, Wagner personnel did not maintain locate markings during an August 20, 2019 excavation causing damage to a 1-inch natural gas service line in Watford City, ND. One MDU customer was affected, and the estimate value of damage was approximately \$858.

In Case No. PU-20-273, Wagner personnel did not maintain locate markings during a June 3, 2020 excavation causing damage to a 96-count fiber line at two separate locations in Minot, ND. 1,030 Midco customers were affected, and the estimate value of damage was \$34,706.

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

Having investigated the alleged violations, Staff concluded that Wagner violated N.D.C.C. section 49-23-05(5) in Case Nos. PU-19-330 and PU-20-273.

Wagner 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, Wagner agrees to be assessed a civil penalty of \$1,000 in Case No. PU-19-330 and \$4,000 in Case No. PU-20-273. Wagner will make \$5,000 payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving the Consent Agreement.

Having considered this matter, the Commission finds the Consent Agreement filed

on July 14, 2020, is reasonable and acceptable. Therefore, the Commission issues the following:

### Order

The Commission Orders:

1. The Consent Agreement of Wagner Construction, Inc. and Commission Advocacy Staff, filed on July 14, 2020, is approved. A copy of the Consent Agreement is attached to and made a part of the Order.
2. Wagner is assessed a civil penalty of \$1,000 in Case No. PU-19-330 and \$4,000 in Case No. PU-20-273 for a total of \$5,000.
3. Wagner shall remit the \$5,000 civil penalty, payable to the North Dakota Public Service Commission within ten business days of service of the Order.

### PUBLIC SERVICE COMMISSION

		
<b>Julie Fedorchak</b> Commissioner	<b>Brian Kroshus</b> Chairman	<b>Randy Christmann</b> Commissioner



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."

Having investigated the alleged violations, Staff believes that Wagner violated N.D.C.C. 49-23-05(5) in Case Nos. PU-19-330 and PU-20-273.

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


1. Wagner violated N.D.C.C. 49-23-05(5) in Case Nos. PU-19-330 and PU-20-273 by failing to conduct the excavations in a careful and prudent manner.
2. Wagner agrees to be assessed a civil penalty of \$1,000 in Case No. PU-19-330 and \$4000 in Case No. PU-20-273 for a total of \$5,000, payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving the Consent Agreement. 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.
3. Wagner 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, Wagner 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.

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 Wagner and bind Wagner for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 14<sup>th</sup> day of July, 2020

PUBLIC SERVICE COMMISSION  
ADVOCACY STAFF – DAMAGE PREVENTION

By:   
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Brian Johnson  
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North Dakota Public Service Commission  
600 East Boulevard Avenue Dept. 408  
Bismarck ND, 58505  
701-328-2407

Dated this 14 day of July, 2020

Wagner Construction, Inc.

By: Kalan Wagner Digitally signed by  
Kalan Wagner

Kalan Wagner (President)