

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Burlington Electric, Inc.
Damage Prevention Enforcement

Case No. PU-19-341

ORDER ON CONSENT AGREEMENT

July 23, 2020

Preliminary Statement

On October 15, 2019, the Commission received a ND One-Call Complaint from Montana-Dakota Utilities Co. (MDU) alleging a violation by Burlington Electric, Inc. (Burlington) of North Dakota Century Code (N.D.C.C.) section 49-23-04(1).

On October 16, 2019, Commission Advocacy Staff (Staff) sent a letter to Burlington enclosing the October 15, 2019 ND One-Call Complaint.

On October 31, 2019, Burlington sent a response to the October 15, 2019 ND One-Call Complaint.

On July 2, 2020, a Consent Agreement, between Staff and Burlington was filed for the resolution of the ND One-Call Complaint.

Discussion

Burlington Electric, Inc. is a North Dakota corporation with a principal address of 15 Johnson Street, Burlington, ND 58722.

MDU alleges a violation by Burlington of N.D.C.C. section 49-23-04(1) by failing to provide an excavation or location notice at least 48 hours before beginning any excavation.

On September 6, 2019, Burlington personnel began an excavation without a ND One-Call ticket. As a result, a 1.25-inch plastic gas service line was hit in Burlington, ND.

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 Burlington violated N.D.C.C. section 49-23-04(1).

Burlington 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, Burlington agrees to be assessed a civil penalty of \$1,500 with \$750 suspended on condition that Burlington commit no further violations of the North Dakota One Call Law (North Dakota Century Code Chapter 49-23) within five years of the date of this Order. Burlington will make \$750 payable to the North Dakota Public Service Commission within ten business days of service of an Order Adopting Consent Agreement (Order).

Having considered this matter, the Commission finds the Consent Agreement filed on July 2, 2020, is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Consent Agreement of Burlington Electric, Inc. and Commission Advocacy Staff, filed on July 2, 2020, is approved. A copy of the Consent Agreement is attached to and made a part of the Order.
2. Burlington is assessed a civil penalty of \$1,500.
3. Burlington shall remit the \$750 civil penalty, payable to the North Dakota Public Service Commission within ten business days of service of the Order. The remaining \$750 civil penalty is suspended on the condition that Burlington 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 Burlington violated North Dakota One Call Law within five years of the date of this Order, Burlington shall remit the suspended portion of

the penalty, \$750, within the time ordered by the Commission, and in addition, any additional fines or penalties imposed 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-19-341
)	
vs.)	CONSENT AGREEMENT
)	
Burlington Electric, Inc.)	
)	
Respondent.)	

Preliminary Statement

On October 15, 2019, the Commission received a ND One-Call Complaint from Dawn Roness with Montana-Dakota Utilities. The complaint alleged a violation by Burlington Electric, Inc. (Burlington) of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

North Dakota Century Code section 49-23-04(1) states 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.

As a result of its investigation, Staff concluded that Burlington 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.

Burlington and Public Service Commission Advocacy Staff (Advocacy 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, the Advocacy Staff and Respondent make the following agreement:

1. Advocacy Staff and Burlington agree to settle this matter on the following terms:

- a. Burlington violated N.D.C.C. § 49-23-04(1), by failing to provide an excavation or location notice at least 48 hours before beginning any excavation.
- b. Burlington agrees to be assessed a civil penalty of \$1,500. Burlington agrees to remit \$750 of the \$1,500, payable to the North Dakota Public Service Commission within ten business days of service of an Order Adopting Consent Agreement (Order). The remaining \$750 civil penalty is suspended on the condition that Burlington commits no further violation of North Dakota Century Code 49-23 within five years of the date of the Order
- c. In the event the Commission finds Burlington violated the North Dakota One Call Law within five years of the date of the Order, Burlington 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
- d. If within five years of the date of the Order there is no subsequent violation of the North Dakota One Call Law by Burlington, the remaining \$750 penalty is withdrawn.
- e. If approved by the Commission, Burlington expressly waives any further procedural requirements with respect to the issuance of the Consent

Agreement and Order, Burlington waives its right to contest this matter or the validity of this Consent Agreement and Order, including all rights to administrative or judicial hearings or appeals.

- f. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Agreement and Order.
2. 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.
3. The undersigned on behalf of Burlington Electric, Inc. is authorized to act on behalf of Burlington Electric, Inc. and bind Burlington Electric, Inc. for purposes of this Consent Agreement, knows and fully understands the content and effect.

Dated this 15th day of July, 2020

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 1 day of July, 2020

Burlington Electric, Inc.

By: Joshua Boling *Joshua Boling*

Title: VP