

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Randall's Excavating, Inc.
Damage Prevention Enforcement**

Case No. PU-19-384

ORDER AND NOTICE OF DEFAULT

April 1, 2021

Preliminary Statement

On December 18, 2019, the Commission received a ND One-Call Complaint from Midco Communications, Inc. (Midco), alleging a violation by Randall's Excavation, Inc. (Randall's) of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

On December 19, 2019, Commission Staff sent a letter to Randall's enclosing the December 18, 2019 ND One-Call Complaint and requested a response by January 6, 2020.

On January 9, 2020, the Commission received a response from Randall's regarding the December 18, 2019 ND One-Call Complaint.

On September 21, 2020, Commission Advocacy Staff (Advocacy Staff) filed a Complaint alleging Randall's violated North Dakota Century Code (NDCC) section 49-23-04(6)(1) by presuming that an underground facility was abandoned without verification by reference to installation records or testing, and NDCC 49-23-06(1) by backfilling over the damage and failing to notify the operator of damage to their facilities.

On December 16, 2020, the Commission found the Complaint stated a prima facie case, and service of the Complaint was initiated on December 18, 2020.

On December 30, 2020, a return receipt was signed by Randall's as evidenced by the return receipt on file with the Commission.

On March 10, 2021, Advocacy Staff filed and served a Motion for Order of Default and Memorandum of Law.

Discussion and Statement of Grounds for Default

Randall's Excavating, Inc. is a foreign corporation with offices located at 1312 110th St. South, Glyndon, MN 56547, and a registered agent address of Mary M. Johnson, 4981 Klitzke Dr., Horace, ND 58047.

On October 24, 2019, Randall's began an excavation while performing sewer and water service install at 1126 Main Ave. West, Fargo, ND. As a result of the excavation, damage to Midco's coaxial cable and conduit were sustained. Randall's presumed the damaged facility was abandoned and proceeded to backfill over the damage. Midco alleges that the cost to repair its facilities was \$3,572.40.

Randall's violated NDCC 49-23-04(6)(1) by presuming that an underground facility was abandoned without verification by reference to installation records or testing, and NDCC 49-23-06(1) by backfilling over the damage and failing to notify the operator of damage to their facilities.

The facts before the Commission indicate that Randall's is in default for failing to file an answer within 20 days after service of the Complaint.

Randall's failure to file an answer to the Complaint constitutes grounds for default under North Dakota Century Code Chapter 28-32 and North Dakota Administrative Code Chapter 69-02-02.

The Commission may impose a civil penalty up to \$25,000. In its Motion for Order of Default and Memorandum of Law, Advocacy Staff requests the Commission impose a penalty of at least \$10,000, and such other relief that the Commission finds just and proper.

This Order and Notice of Default constitutes written Notice of Default and a statement of the grounds for default.

The Commission issues the following:

Order and Notice of Default

The Commission Orders:

1. Randall's Excavating, Inc. is in default under North Dakota Century Code Chapter 28-32 and North Dakota Administrative Code Chapter 69-02-02 for failing to file an answer to the Complaint within twenty days after service of the Complaint.
2. Randall's Excavating, Inc. is in violation of North Dakota Century Code 49-23-04(6)(1) by presuming that an underground facility was abandoned without verification by reference to installation records or testing, and North Dakota Century Code 49-23-06(1)

by backfilling over the damage and failing to notify the operator of damage to their facilities.

3. Randall's Excavating, Inc. is assessed a civil penalty of \$10,000.
4. Randall's Excavating, Inc. shall remit the \$10,000 civil penalty, payable to the North Dakota Public Service Commission, within ten business days upon service of this Order and Notice of Default.
5. This Order and Notice of Default constitutes written Notice of Default and a statement of the grounds for default.
6. Under North Dakota Century Code Section 28-32-30(2), Randall's Excavating, Inc. has seven days after service of this Order and Notice of Default to file a written motion requesting that the default order be vacated. Unless Randall's Excavating, Inc., within seven days after service of this Order and Notice of Default, files a written motion requesting that the default order be vacated, this Order and Notice of Default will be the final determination of this matter.

PUBLIC SERVICE COMMISSION



Randy Christmann
Commissioner



Julie Fedorchak
Chair



Brian Kroshus
Commissioner