

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	Case No. PU-19-384
vs.)	
)	CONSENT AGREEMENT
Randall's Excavating, Inc.,)	
Respondent .)	

Preliminary Statement

This Consent Agreement is entered into by and between Randall's Excavating, Inc. (Randall's) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket No. PU-19-384.

On December 18, 2019, the Commission received a ND One-Call Complaint from Midcontinent Communications (Midco). The complaint alleged a violation by Randall's of North Dakota Century Code (NDCC) section 49-23-04(6)(I) by presuming that an underground facility was abandoned without verification by reference to installation records or testing, and a violation of NDCC section 49-23-06(1) by failing to contact the operator as soon as reasonably possible and backfilling over the damage.

On December 19, 2019, Commission staff issued a letter informing Randall's of Midco's complaint filing and requested a response by January 6, 2020. Randall's January 9, 2020 response asserted that there were no markings in the area of the facility, and Randall's backhoe operator did not consider the line to be active or potentially active, and

was advised by the property owner that there were no private facilities in the area of excavation.

On October 21, 2019 Randall's personnel provided an excavation notice to the North Dakota One Call Notification Center (NDOC), with work to begin on October 24, 2019. The NDOC assigned locate ticket number 19149371 to the excavation notice, which indicates the work was sewer and water service install at 1126 Main Ave W, West Fargo, ND. The expiration date for the ticket was November 14, 2019.

On October 24, 2019, Randall's began an excavation as defined in NDCC section 49-23-01(7) while performing sewer and water service installation at the location cited in the excavation notice. As a result of this excavation, damage was caused to Midco's unmarked communication coaxial cable and conduit. After the damage occurred, Randall's personnel presumed the damaged facility was abandoned in violation of NDCC section 49-23-04(6)(l), and proceeded to backfill over the damage. During a subsequent excavation in an adjacent area to the damage on October 25, 2019, Randall's personnel encountered, but did not damage what appeared to be the same underground facility. On October 26, 2019, Randall's personnel discussed the incidents with Midco who then initiated an investigation and was able to find and confirm the damage to their underground facility from the October 24, 2019 excavation. Midco alleges the cost to repair its facilities was approximately \$3,572.40.

NDCC section 49-23-04(6)(l) states that A facility owner, excavator, or other person may not present or presume that an underground facility is abandoned, or treat an underground facility as abandoned, unless the facility has been verified as abandoned

by reference to installation records or by testing. The notification center shall establish a method of providing personnel from a facility owner qualified to safely inspect and verify whether a facility is abandoned or inactive if necessary. An inactive facility must be considered active for purposes of this section.

Having investigated the alleged violation, Staff believes that Randall's violated NDCC section 49-23-04(6)(l).

Randall's 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 Randall's agree to the following, subject to the approval and acceptance of the Commission:


1. Randall's violated NDCC section 49-23-04(6)(l) by presuming that an underground facility was abandoned without verification by reference to installation records or testing.
2. Randall's agrees to be assessed a civil penalty of \$2000. Randall's agrees to remit \$1000 of the \$2000, payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving the Consent Agreement (Order). The remaining \$1000 civil penalty is suspended on the condition that Randall's commits no further violation of NDCC section 49-23 within five years of the date of the Order
3. In the event the Commission finds Randall's violated the NDCC section 49-23 within five years of the date of the Order, Randall's 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.

4. If within five years of the date of the Order there is no subsequent violation of the NDCC section 49-23 by Randall's, the remaining \$1000 penalty is withdrawn.
5. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violation alleged in the Case.
6. Randall's 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, Randall's understands and agrees to waive all rights to contest the violation, 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, including all rights to administrative or judicial hearings or appeals.
7. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement and Order.
8. 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.
9. The undersigned is authorized to act on behalf of Randall's and bind Randall's for purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 8th day of September, 2021

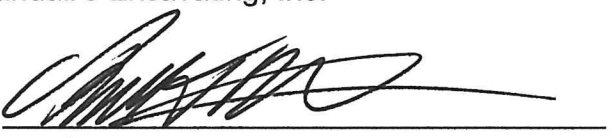
PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By: 

Brian Johnson
Special Assistant Attorney General Bar ID 07937
North Dakota Public Service Commission
600 East Boulevard Avenue Dept. 408
Bismarck ND, 58505
701-328-2407

Dated this 23 day of AUGUST, 2021

Randall's Excavating, Inc.

By: 

Name: RANDALL HENRIKSEN