

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

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PUBLIC SERVICE COMMISSION,	)		
	)		
vs.	)	Complainant,	Case No. PU-19-330
	)		PU-20-273
	)		
Wagner Construction, Inc.,	)		CONSENT AGREEMENT
	)		
	)	Respondent .	

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**Preliminary Statement**

This Consent Agreement is entered into by and between Wagner Construction, Inc. (Wagner) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket Nos. PU-19-330 and PU-20-273.

Case No. PU-19-330: On August 14, 2019, the Commission received a ND One-Call Complaint from Montana-Dakota Utilities Co. (MDU). The complaint alleged a violation by Wagner of North Dakota Century Code section (N.D.C.C.) 49-23-05(5) for failure to conduct the excavation in a careful and prudent manner.

Case No. PU-20-273: On June 18, 2020, the Commission received a ND One-Call Complaint from Midcontinent Communications (Midco). The complaint alleged a violation by Wagner of N.D.C.C. 49-23-05(5) for failure to conduct the excavation in a careful and prudent manner.

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: \_\_\_\_\_

  
Brian Johnson  
Special Assistant Attorney General Bar ID 07397  
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)