

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Northwest Excavating, LLC
Damage Prevention Enforcement

Case No. PU-20-363

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Geralyn R. Schmaltz deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **5th day of August 2021** she deposited in the United States Mail at Bismarck, North Dakota, **two** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

- **Order on Consent Agreement**

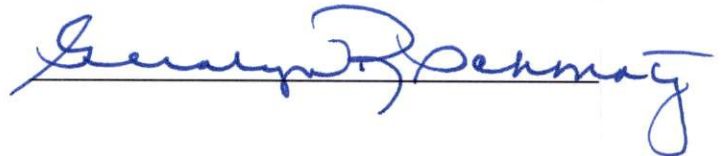
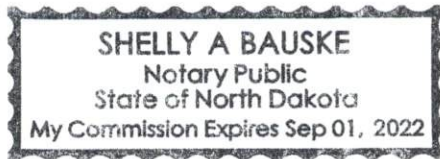
The envelopes were addressed as follows:

Jesse Soper
 Northwest Excavating
 2707 20th Ave. S
 Moorhead, MN 56560-5930
Cert. No. 7020 1810 0000 0894 2448

Matt Ihland
 Red River Communications
 510 Broadway
 Abercrombie, ND 58001
Cert. No. 7020 1810 0000 0894 2455

Each address shown is the respective addressee's last reasonably ascertainable post office mail address.

Subscribed and sworn to before me
this **5th day of August 2021**.

Shelly A Bauske

 Notary Public

SEAL

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Northwest Excavating, LLC
Damage Prevention Enforcement**

Case No. PU-20-363

ORDER ON CONSENT AGREEMENT

August 4, 2021

Preliminary Statement

On August 12, 2020, the Commission received a ND One-Call Complaint (Complaint) from Red River Communications (Red River) alleging a violation by Northwest Excavating, LLC (Northwest) of North Dakota Century Code (NDCC) chapter 49-23: One-Call Excavation Notice System.

On August 13, 2020, the Commission sent a letter to Northwest enclosing the August 12, 2020 Complaint, requesting a response by August 27, 2020.

On August 27, 2020, Northwest filed a response to the Complaint.

On July 12, 2021, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy) and Northwest Excavating, LLC was filed for the resolution of the Complaint.

Discussion

Northwest Excavating, LLC is a foreign limited liability company with a principal address of 2635 20th Ave S, Moorhead, MN 56560.

On May 14, 2020, Northwest personnel provided an excavation notice to the North Dakota One Call Notification Center (NDOC), with work to begin on May 19, 2020. The NDOC assigned locate ticket number 20043180 to the excavation notice, which indicates the work was related to a water line installation at 9455 West Ridge Road, Hankinson, ND. The expiration date for the ticket was June 9, 2020.

On July 2, 2020, after the expiration date for the ticket, Northwest began an excavation as defined in NDCC section 49-23-01(7) at the location cited in the excavation notice. As a result of this excavation, approximately \$7500 damage was caused to a 72-count fiber optic line. Six customers experienced a service disruption due to the incident.

NDCC 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.

Advocacy Staff concluded that Northwest violated NDCC section 49-23-04(1) by failing to provide an excavation or location notice before beginning any excavation.

Northwest and Advocacy Staff engaged in good faith settlement discussions resulting in a Consent Agreement intended to avoid further administrative proceedings or litigation.

Under the Consent Agreement, Northwest agrees to be assessed a civil penalty of \$1,000, 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 is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Consent Agreement, filed on July 12, 2021, between Northwest Excavating, LLC and Advocacy Staff is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. Northwest Excavating, LLC is assessed a civil penalty of \$1,000.
3. Northwest Excavating, LLC shall remit \$1,000 civil penalty, payable to the North Dakota Public Service Commission, within ten business days of service of this Order.

PUBLIC SERVICE COMMISSION


Randy Christmann
Commissioner


Julie Fedorchak
Chair


Brian Kroshus
Commissioner

NDOC assigned locate ticket number 20043180 to the excavation notice. The work related to a water line installation at 9455 West Ridge Road, Hankinson, ND. The expiration date for the ticket was June 9, 2020.

On July 2, 2020, Northwest began an excavation as defined in NDCC section 49-23-01(7) at the location cited in the excavation notice. As a result of this excavation, \$7500 worth of damage was estimated to a 72-count fiber optic line, and 6 customers experience a service disruption.

NDCC 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.

Having investigated the alleged violation, Staff believes that Northwest violated NDCC section 49-23-04(1).

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

1. Northwest violated NDCC section 49-23-04(1) for failing to provide an excavation or location notice before beginning any excavation.

2. Northwest agrees to be assessed a civil penalty of \$1000, payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving the Consent Agreement (Order).
3. 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.
4. Northwest 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, Northwest 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.
5. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement and Order.
6. 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.
7. The undersigned is authorized to act on behalf of Northwest and bind Northwest

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

Dated this 12th day of July, 2021

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 12 day of July, 2021

Northwest Excavating, LLC

By: _____

Name: _____

Jesse Soper