

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
Gladen Construction, Inc.  
Damage Prevention Enforcement

Case No. PU-20-368

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 **15th day of July 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**

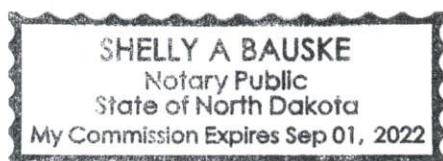
The envelopes were addressed as follows:

Gladen Construction  
40739 US Hwy 71  
LaPorte, MN 56461  
Cert. No. 7020 1810 0000 0894 2288

Lisa Kalberg  
825 Rice St  
St. Paul, MN 55117  
Cert. No. 7020 1810 0000 0894 2295

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

Subscribed and sworn to before me  
this **15th day of July 2021**.



SEAL



Notary Public

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Gladen Construction, Inc.  
Damage Prevention Enforcement**

**Case No. PU-20-368**

**ORDER ON CONSENT AGREEMENT**

**July 14, 2021**

**Preliminary Statement**

On August 18, 2020, the Commission received a ND One-Call Complaint (Complaint) from Northern States Power Company dba Xcel Energy (Xcel) alleging a violation by Gladen Construction, Inc. (Gladen) of North Dakota Century Code (NDCC) chapter 49-23: One-Call Excavation Notice System.

On August 19, 2020, the Commission sent a letter to Gladen enclosing the August 18, 2020 Complaint, requesting a response by September 2, 2020.

On June 4, 2021, Gladen filed a response to the Complaint.

On June 21, 2021, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy) and Gladen Construction, Inc. was filed for the resolution of the Complaint.

**Discussion**

Gladen Construction, Inc. is a foreign corporation with a principal address of 40739 US 71, Laporte, MN 56461.

On June 23, 2020, Gladen Construction personnel provided an excavation notice to the North Dakota One Call Notification Center (NDOC), with work to begin on June 26, 2020. The NDOC assigned locate ticket number 20073975 to the excavation notice, which indicates the work was utility replacement and road grading at the intersection of 35<sup>th</sup> St SE and 15<sup>th</sup> Ave N, Casselton, ND. The expiration date for the ticket was July 17, 2020.

On July 17, 2020, Gladen began an excavation as defined in NDCC section 49-23-01(7) while performing utility replacement and road grading at the location cited in the excavation notice. As a result of this excavation, approximately \$2736 damage was caused to Xcel's 6-inch plastic natural gas main line. The Complaint indicates no customers were affected by the incident.

NDCC section 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."

Advocacy Staff concluded that Gladen violated NDCC section 49-23-05(5) by failing to conduct its excavation in a careful and prudent manner.

Gladen 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, Gladen agrees to be assessed a civil penalty of \$5,900, with \$2,000 suspended on condition that Gladen commit no further violation of the North Dakota One-Call Law (North Dakota Century Code chapter 49-23) within five years of the date of an Order accepting the Consent Agreement. Gladen will make \$3,900 payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting the Consent Agreement.

Having considered this matter, the Commission finds the June 21, 2021 Consent Agreement is reasonable and acceptable. Therefore, the Commission issues the following:

### **Order**

The Commission Orders:

1. The Consent Agreement, filed on June 21, 2021, between Gladen Construction, Inc. 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. Gladen Construction, Inc. is assessed a civil penalty of \$5,900.
3. Gladen Construction, Inc. shall remit \$3,900 civil penalty, payable to the North Dakota Public Service Commission, within ten business days of service of this Order. The remaining \$2,000 civil penalty is suspended on condition that Gladen commit no further violation of North Dakota Century Code chapter 49-23 within five years of the date of this Order.
4. In the event the Commission finds Gladen violated North Dakota One-Call Law within five years of the date of this Order, Gladen shall remit the suspended portion of the

penalty, \$2,000, within the time ordered by the Commission and remit any additional fines or penalties imposed for subsequent violation.

**PUBLIC SERVICE COMMISSION**

  
Randy Christmann  
Commissioner

  
Julie Fedorchak  
Chair

  
Brian Kroshus  
Commissioner

**BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA**

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<b>PUBLIC SERVICE COMMISSION,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. PU-20-368</b>
	)	
<b>Gladen Construction, Inc.,</b>	)	<b>CONSENT AGREEMENT</b>
<b>Respondent.</b>	)	

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**Preliminary Statement**

This Consent Agreement is entered into by and between Gladen Construction, Inc. (Gladen) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket No. PU-20-368.

On August 18, 2020, the Commission received a ND One-Call Complaint from Excel Energy (Excel). The complaint alleged a violation by Gladen of North Dakota Century Code (NDCC) section 49-23-05(5) for failure to conduct its excavation in a careful and prudent manner.

On August 19, 2020, Commission staff issued a letter informing Gladen of Excel's complaint filing and requested a response by September 2, 2020. Gladen's June 4, 2021 response agreed that Gladen struck Xcel's natural gas line.

On June 23, 2020 Gladen personnel provided an excavation notice to the North Dakota One Call Notification Center (NDOC), with work to begin on June 26, 2020. The NDOC assigned locate ticket number 20073975 to the excavation notice, which indicates

the work was utility replacement and road grading at the intersection of 35<sup>th</sup> St SE and 15<sup>th</sup> Ave N, Casselton, ND. The expiration date for the ticket was July 17, 2020.

On July 17, 2020, Gladen began an excavation as defined in NDCC section 49-23-01(7) while performing utility replacement and road grading at the location cited in the excavation notice. As a result of this excavation, damage was caused to Xcel's 6" plastic natural gas main line.

NDCC section 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 violation, Staff believes that Gladen violated NDCC section 49-23-05(5).

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

1. Gladen violated NDCC section 49-23-05(5) by failing to conduct its excavation in a careful and prudent manner.
2. Gladen agrees to be assessed a civil penalty of \$5,900. Gladen agrees to remit \$3,900 of the \$5,900, 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 \$2000 civil penalty is suspended on

the condition that Gladen 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 Gladen violated the NDCC section 49-23 within five years of the date of the Order, Gladen 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 Gladen, the remaining \$2000 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. Gladen 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, Gladen 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. Pursuant to the Order approved by the Commission in case nos. PU-18-420 and PU-18-421, Gladen must remit the suspended portion of the penalty in those cases, \$1000. The \$1000, payable to the North Dakota Public Service

Commission within ten business days of service of an Order accepting or approving the Consent Agreement in this case.

8. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement and Order.
9. 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.
10. The undersigned is authorized to act on behalf of Gladen and bind Gladen for purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 21<sup>st</sup> day of June, 2021

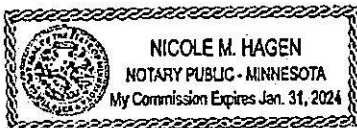
PUBLIC SERVICE COMMISSION  
ADVOCACY STAFF – DAMAGE PREVENTION

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 16 day of June, 2021

Gladen Construction, Inc.



By: \_\_\_\_\_

Name: \_\_\_\_\_