

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Central Trenching Inc
Damage Prevention Enforcement**

Case No. PU-20-377

**Public Service Commission
Central Trenching Inc
Damage Prevention Enforcement**

Case No. PU-20-424

ORDER ON CONSENT AGREEMENT

August 4, 2021

Preliminary Statement

Case No. PU-20-377

On August 24, 2020, the Commission received a ND One-Call Complaint (Complaint) from Montana-Dakota Utilities Co. (MDU) alleging a violation by Central Trenching Inc (Central) of North Dakota Century Code (NDCC) chapter 49-23: One-Call Excavation Notice System.

On August 25, 2020, the Commission sent a letter to Central enclosing the August 24, 2020 Complaint, requesting a response by September 8, 2020.

On August 31, 2020, Central filed a response to the Complaint.

Case No. PU-20-424

On October 12, 2020, the Commission received a ND One-Call Complaint (Complaint) from Montana-Dakota Utilities Co. (MDU) alleging a violation by Central Trenching Inc (Central) of North Dakota Century Code (NDCC) chapter 49-23: One-Call Excavation Notice System.

On October 14, 2020, the Commission sent a letter to Central enclosing the October 12, 2020 Complaint, requesting a response by October 28, 2020.

On October 20, 2020, Central filed a response to the Complaint.

Case No. PU-20-377 & Case No. PU-20-424

On July 9, 2021, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy) and Central Trenching Inc was filed for the resolution of the Complaints.

Discussion

Central Trenching Inc is a domestic corporation with a principal address of 500 50th St SW, Minot, ND 58701.

Case No. PU-20-377

The Complaint alleges a violation by Central of North Dakota Century Code (NDCC) section 49-23-05(5) by failing to conduct its excavation in a careful and prudent manner.

On June 12, 2020 Central personnel provided an excavation notice to the North Dakota One Call Notification Center (NDOC), with work to begin on June 17, 2020. The NDOC assigned locate ticket number 20066266 to the excavation notice, which indicates the work was installing fiber optic cable at 612 Burdick Expressway E, Minot, ND. The expiration date for the ticket was July 8, 2020.

On June 30, 2020, Central began an excavation as defined in NDCC section 49-23-01(7) while performing installation of fiber optic cable at the location cited in the excavation notice. As a result of the excavation MDU's 2" natural gas main line was damaged impacting two customers. MDU alleges the cost to repair the line was approximately \$5,000.

Case No. PU-20-424

The complaint alleges a violation by Central of NDCC section 49-23-05(5) for failure to conduct its excavation in a careful and prudent manner.

On September 9, 2020 Central personnel provided an excavation notice to the NDOC, with work to begin on September 12, 2020. The NDOC assigned locate ticket number 20128066 to the excavation notice, which indicates the work was installing fiber optic cable at 406 1st Ave, Burlington, ND. The expiration date for the ticket was October 3, 2020.

On September 18, 2020, Central began an excavation as defined in NDCC section 49-23-01(7) while performing installation of fiber optic cable at the location cited in the excavation notice. As a result of the excavation MDU's 3/4" natural gas service line was damaged impacting one customer. MDU alleges the cost to repair the line was approximately \$1,500.

Case No. PU-20-377 & Case No. PU-20-424

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 Central violated NDCC section 49-23-05(5) in Case No. PU-20-377 and in Case No. PU-20-424.

Central 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, Central agrees to be assessed a civil penalty of \$1,100 in Case No. PU-20-377, and \$1,000 in Case No. PU-20-424 for a total of \$2,100, with \$1,050 suspended on the condition that Central 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 approving the Consent Agreement (Order). Central will make \$1,050 payable to the North Dakota Public Service Commission within ten business days of service of the Order.

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 9, 2021, between Central Trenching 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. Central Trenching Inc is assessed a civil penalty of \$2,100.
3. Central Trenching Inc shall remit \$1,050 civil penalty, payable to the North Dakota Public Service Commission, within ten business days of service of this Order. The remaining \$1,050 civil penalty is suspended on condition that Central 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 Central violated North Dakota One-Call Law within five years of the date of this Order, Central shall remit the suspended portion of the penalty, \$1,050, 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

On June 12, 2020 Central personnel provided an excavation notice to the North Dakota One Call Notification Center (NDOC), with work to begin on June 17, 2020. The NDOC assigned locate ticket number 20066266 to the excavation notice, which indicates the work was installing fiber optic cable at 612 Burdick Expressway E, Minot, ND. The expiration date for the ticket was July 8, 2020.

On June 30, 2020, Central began an excavation as defined in NDCC section 49-23-01(7) while performing installation of fiber optic cable at the location cited in the excavation notice. As a result of the excavation MDU's 2" natural gas main line was damaged impacting two customers. MDU alleges the cost to repair the line was approximately \$5,000.

Case No. PU-20-424: On October 12, 2020, the Commission received a ND One-Call Complaint from MDU. The complaint alleged a violation by Central of NDCC section 49-23-05(5) for failure to conduct its excavation in a careful and prudent manner.

On October 14, 2020, Commission staff issued a letter informing Central of MDU's complaint filing and requested a response by October 28, 2020. Central's October 20, 2020 response did not dispute that Central failed to conduct its excavation in a careful and prudent manner.

On September 9, 2020 Central personnel provided an excavation notice to the NDOC, with work to begin on September 12, 2020. The NDOC assigned locate ticket number 20128066 to the excavation notice, which indicates the work was installing fiber optic cable at 406 1st Ave, Burlington, ND. The expiration date for the ticket was October 3, 2020.

On September 18, 2020, Central began an excavation as defined in NDCC section 49-23-01(7) while performing installation of fiber optic cable at the location cited in the excavation notice. As a result of the excavation MDU's 3/4" natural gas service line was damaged impacting one customer. MDU alleges the cost to repair the line was approximately \$1,500.

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 Central violated NDCC section 49-23-05(5) in Case Nos. PU-20-377 and PU-20-434.

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

1. Central violated NDCC section 49-23-05(5) in Case Nos. PU-20-377 and PU-20-424 by failing to conduct its excavations in a careful and prudent manner.
2. Central agrees to be assessed a civil penalty of \$1,100 in Case No. PU-20-377, and \$1,000 in Case No. PU-20-424 for a total of \$2,100. Central agrees to remit \$1,050 of the \$2,100, 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 \$1,050 civil penalty is suspended on

the condition that Central 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 Central violated the NDCC section 49-23 within five years of the date of the Order, Central 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 Central, the remaining \$1,050 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. Central 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, Central 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 Central and bind Central for purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 8th day of July, 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 29th day of June, 2021

Central Trenching, Inc.

By:  - Sec. Treas

Name: Brenda Heuin