

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
CenturyLink Communications, LLC
Damage Prevention Enforcement**

Case No. PU-20-386

ORDER ON CONSENT AGREEMENT

August 4, 2021

Preliminary Statement

On August 31, 2020, the Commission received a ND One-Call Complaint (Complaint) from Gudajtes Farms alleging a violation by CenturyLink Communications, LLC (CenturyLink) of North Dakota Century Code (NDCC) chapter 49-23: One-Call Excavation Notice System.

On September 10, 2020, the Commission sent a letter to CenturyLink enclosing the August 31, 2020 Complaint, requesting a response by September 24, 2020.

On September 22, 2020, CenturyLink filed a response to the Complaint.

On September 28, 2020, Gudajtes Family Farm/TKC Construction, LLC (Gudajtes) filed a response to CenturyLink's September 22, 2020, response.

On June 24, 2021, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy) and CenturyLink Communications, LLC was filed for the resolution of the Complaint.

Discussion

CenturyLink Communications, LLC is a foreign limited liability company with a principal address of 100 CenturyLink Drive, Monroe, LA 71203.

The Complaint alleges a violation by CenturyLink of North Dakota Century Code (NDCC) section 49-23-04(6)(a) by failing to locate and mark its underground facility within the location period.

On August 12, 2020 Gudajtes personnel provided an excavation notice to the North Dakota One Call Notification Center (NDOC), with work to begin on August 15,

2020. The NDOC assigned locate ticket number 20109587 to the excavation notice, which indicates the work was mole plow tiling in the SE ¼ of section 25, Township – 156N, Range – 52W, near Warsaw, ND.

On August 18, 2020 at approximately 6:30pm CenturyLink submitted a positive response on ticket 20109587, indicating that its facilities had been marked. The due date for marking facilities on this ticket was August 15, 2020 at 12:01 am. The facilities were marked three days later than what is required in NDCC section 49-23-04(6)(a). No damage resulted from the excavation.

NDCC section 49-23-04(6)(a) states “An operator with underground facilities within the area of a location request shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator within the location period or as agreed by the parties.”

Advocacy Staff concluded that CenturyLink violated NDCC section 49-23-04(6)(a).

CenturyLink 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, CenturyLink agrees to be assessed a civil penalty of \$6,000 payable to the North Dakota Public Service Commission within ten business days of service of an Order approving the Consent Agreement.

Having considered this matter, the Commission finds the June 24, 2021 Consent Agreement is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Consent Agreement, filed on June 24, 2021, between CenturyLink Communications, 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. CenturyLink Communications, LLC is assessed a civil penalty of \$6,000.

3. CenturyLink Communications, LLC shall remit \$6,000 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

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	Case No. PU-20-386
vs.)	
)	CONSENT AGREEMENT
CenturyLink Communications, LLC,)	
Respondent .)	

Preliminary Statement

This Consent Agreement is entered into by and between CenturyLink Communications, LLC (CenturyLink) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket No. PU-20-386.

On August 31, 2020, the Commission received a ND One-Call Complaint from Gudajtes Farms (Gudajtes). The complaint alleged a violation by CenturyLink of North Dakota Century Code (NDCC) section 49-23-04(6)(a) by failing to locate and mark its underground facility within the location period.

On September 10, 2020, Commission staff issued a letter informing CenturyLink of Gudajtes' complaint filing and requested a response by September 24, 2020. CenturyLink's September 22, 2020 response agreed that CenturyLink did not locate and mark its underground facility within the location period.

On August 12, 2020 Gudajtes personnel provided and excavation notice to the North Dakota One Call Notification Center (NDOC), with work to begin on August 15,

2020. The NDOC assigned locate ticket number 20109587 to the excavation notice, which indicates the work was mole plow tiling in the SE ¼ of section 25, Township – 156N, Range – 52W, near Warsaw, ND.

On August 18, 2020 at approximately 6:30pm CenturyLink submitted a positive response on ticket 20109587, indicating that its facilities had been marked. The due date for marking facilities on this ticket was August 15, 2020 at 12:01am. The facilities were marked three days later than what is required in NDCC section 49-23-04(6)(a). No damage resulted from this excavation.

NDCC section 49-23-04(6)(a) states “An operator with underground facilities within the area of a location request shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator within the location period or as agreed by the parties.”

Having investigated the alleged violation, Staff believes that CenturyLink violated NDCC section 49-23-04(6)(a).

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

1. CenturyLink violated NDCC section 49-23-04(6)(a) by failing to locate and mark its underground facility within the location period.

2. CenturyLink agrees to be assessed a civil penalty of \$6000, 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. CenturyLink 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, CenturyLink 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 CenturyLink and bind CenturyLink for purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 25th day of June, 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 _____ day of _____, 2021

CenturyLink Communications, LLC

By:  _____

Name: Brian Fanciulli