



Public Service Commission State of North Dakota

COMMISSIONERS

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August 17, 2021

Mr. Steve Kahl
Executive Secretary
ND Public Service Commission
600 E Boulevard Avenue Dept. 408
Bismarck, ND 58505-0480

via Hand Delivery

Re: Case No. PU-20-449
Public Service Commission
Pennington Fencing
Damage Prevention Enforcement

Dear Mr. Kahl:

Enclosed is a copy of the Consent Agreement to be filed in the above captioned case.

Best Regards,

A handwritten signature in blue ink, appearing to read "Brian Johnson".

Brian Johnson
Legal Counsel

Enclosure

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	Case No. PU-20-449
vs.)	
)	CONSENT AGREEMENT
Pennington Fencing,)	
Respondent .)	

Preliminary Statement

This Consent Agreement is entered into by and between Pennington Fencing (Pennington) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket No. PU-20-449.

On November 19, 2020, the Commission received a ND One-Call Complaint from Belle Fourche Pipeline Company (Belle Fourche). The complaint alleged a violation by Pennington of North Dakota Century Code (NDCC) section 49-23-04(1) by failing to provide an excavation or location notice before beginning any excavation.

On November 20, 2020, Commission staff issued a letter informing Pennington of Belle Fourche's complaint filing and requested a response by December 4, 2020. Pennington's December 5, 2020 response agreed that Pennington did not have a valid locate ticket at the time of its excavation.

On November 10, 2020 Pennington personnel provided an excavation notice to the North Dakota One Call Notification Center (NDOC), with work to begin on November

14, 2020. The NDOC assigned locate ticket number 20169804 to the excavation notice, which indicates the work was installation of fence along Flat Rock Road, Southwest McKenzie UT, ND. The expiration date for the ticket was December 5, 2020.

On November 11, 2020, Pennington began an excavation as defined in NDCC section 49-23-01(7) while performing a fence installation at the location cited in the excavation notice. This excavation took place prior to the work to begin date on the ticket. No damage resulted from this excavation.

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 Pennington violated NDCC section 49-23-04(1).

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

1. Pennington violated NDCC section 49-23-04(1) by failing to provide an excavation or location notice before beginning any excavation.
2. Pennington agrees to be assessed a civil penalty of \$500. Pennington agrees to remit \$250 of the \$500, 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 \$250 civil penalty is suspended on the condition that Pennington 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 Pennington violated the NDCC section 49-23 within five years of the date of the Order, Pennington 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 Pennington, the remaining \$250 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. Pennington 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, Pennington 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 Pennington and bind Pennington for purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 17th day of August, 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 1st day of July, 2021

Pennington Fencing

By: _____

Name: _____