

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Pennington Fencing
Damage Prevention Enforcement**

Case No. PU-20-449

ORDER ON CONSENT AGREEMENT

September 1, 2021

Preliminary Statement

On November 19, 2020, the Commission received a ND One-Call Complaint from Belle Foursche Pipeline Company alleging a violation by Pennington Fencing (Pennington) of North Dakota Century Code (NDCC) chapter 49-23: One-Call Excavation Notice System (Complaint).

On November 20, 2020, the Commission sent a letter to Pennington enclosing the November 19, Complaint, requesting a response by December 4, 2020.

On December 7, 2020, Pennington responded to the complaint.

On August 17, 2021, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy Staff) and Pennington was filed for the resolution of the Complaint.

Discussion

Pennington Fencing is a trade name owned by Ian Pennington with principal address of 16302 Bennie Peer RD Sidney, MT 59270-9002.

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. The NDOC assigned locate ticket number 20169804 to the excavation notice,

On November 11, 2020, Pennington began an excavation as defined in NDCC section 49-23-01(7) while performing a fence installation at Flat Rock Road in McKenzie County, ND. This excavation took place prior to the work to begin date on the ticket. The Complaint did not indicate whether any damage resulted from the excavation. The Complaint did not indicate whether any customers were affected by the incident.

The Complaint alleges that Pennington violated NDCC section 49-23-04(1) by failing to provide an excavation or location notice before beginning any 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, Advocacy Staff believes that Pennington violated NDCC section 49-23-04(1).

Pennington 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, Pennington agrees to be assessed a civil penalty of \$500, with \$250 suspended on condition that Pennington commits 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. Pennington will make \$250 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 Consent Agreement is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Consent Agreement between Pennington Fencing and Advocacy Staff, filed with the Commission on August 17, 2021, is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. Pennington. is assessed a civil penalty of \$500.
3. Pennington shall remit \$250 civil penalty, payable to the North Dakota Public Service Commission, within ten business days of service of this Order. The remaining \$250 civil penalty is suspended on condition that Pennington 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 Pennington violated North Dakota One-Call Law within five years of the date of this Order, Pennington shall remit the suspended portion of the penalty, \$250, 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

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

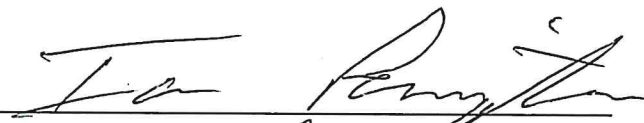
PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

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: Ian Pennington