

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Austin Broden
Damage Prevention Enforcement

Case No. PU-21-56

ORDER ON CONSENT AGREEMENT

September 1, 2021

Preliminary Statement

On January 28, 2021, the Commission received a ND One-Call Complaint from CHS Inc. alleging a violation by Austin Broden (Broden) of North Dakota Century Code (NDCC) chapter 49-23: One-Call Excavation Notice System (Complaint).

On February 4, 2021, the Commission sent a letter to Broden enclosing the January 28 Complaint, requesting a response by February 18, 2021.

On June 30, 2021, Broden responded to the complaint.

On August 9, 2021, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy Staff) and Austin Broden was filed for the resolution of the Complaint.

Discussion

Austin Broden's address is 3872 Cty Hwy 7 Gary, MN 56545.

On December 9, 2020, Broden began an excavation as defined in NDCC section 49-23-01(7) while performing a drain tile installation at latitude 47.0006021, longitude 97.183764, near Fargo, ND. There is no evidence of Broden contacting the North Dakota One Call Notification Center prior to beginning this excavation. No damage resulted from Broden's excavation. No customers were affected by this incident.

The Complaint alleges that Broden 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 Broden violated NDCC section 49-23-04(1).

Broden 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, Broden agrees to be assessed a civil penalty of \$500, with \$250 suspended on condition that Broden 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. Broden 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 Austin Broden and Advocacy Staff, filed with the Commission on August 9, 2021, is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. Broden is assessed a civil penalty of \$500.
3. Broden 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 Broden 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 Broden violated North Dakota One-Call Law within five years of the date of this Order, Broden 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-21-56
)	
Austin Broden,)	CONSENT AGREEMENT
Respondent .)	

Preliminary Statement

This Consent Agreement is entered into by and between Austin Broden (Mr. Broden) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket No. PU-21-56.

On January 28, 2021, the Commission received a ND One-Call Complaint from CHS Inc. (CHS). The complaint alleged a violation by Mr. Broden 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 February 4, 2021, Commission staff issued a letter informing Mr. Broden of CHS's complaint filing and requested a response by February 18, 2021. Mr. Broden's June 30, 2021 response agreed that he did not have a valid location notice prior to beginning his excavation.

On December 9, 2020, Mr. Broden began an excavation as defined in NDCC section 49-23-01(7) while performing drain tile installation at latitude 47.0006021,

longitude 97.183764, near Fargo, ND. There is no evidence of Mr. Broden contacting the North Dakota One Call Notification Center prior to beginning this excavation. No damage resulted from Mr. Broden's 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 Mr. Broden violated NDCC section 49-23-04(1).

Mr. Broden 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 Mr. Broden agree to the following, subject to the approval and acceptance of the Commission:

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

Dated this 9 day of August, 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 9 day of August, 2021

Austin Broden

By: 

Name: Austin Broden