

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Montana-Dakota Utilities Co.
Damage Prevention Enforcement**

Case No. PU-21-142

ORDER ON CONSENT AGREEMENT

August 18, 2021

Preliminary Statement

On April 14, 2021, the Commission received a ND One-Call Complaint (Complaint) from Central Trenching Inc. (Central) alleging a violation by Montana-Dakota Utilities Co. (MDU) of North Dakota Century Code (NDCC) chapter 49-23: One-Call Excavation Notice System.

On April 20, 2021, the Commission sent a letter to MDU enclosing the April 14, 2021 Complaint, requesting a response by May 4, 2021.

On April 22, 2021, MDU filed a response to the Complaint.

On July 21, 2021, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy) and MDU was filed for the resolution of the Complaint.

Discussion

Montana-Dakota Utilities Co. is a foreign corporation with a principal address of 400 N 4th St, Bismarck, ND 58501.

On May 7, 2020, Central personnel provided an excavation notice to the North Dakota One Call Notification Center (NDOC), with work to begin on May 12, 2020. The NDOC assigned locate ticket number 20037761 to the excavation notice, which indicates the work was installing underground cable at the intersection of 37th Ave SW and 4th St SW in Minot, ND.

On May 19, 2020, at approximately 10:52 am, Central began its excavation in the location cited in the excavation notice. As a result of the excavation, MDU's 2-inch natural gas main line was damaged approximately 9 feet from the nearest locate marks.

The Complaint alleges that MDU violated NDCC section 49-23-04(6)(b) by failing to mark its underground facility within 24 inches horizontally.

MDU's April 22, 2021 response confirms that MDU did not locate and mark its underground facility within 24 inches horizontally.

NDCC section 49-23-04(6)(b) states "For purposes of this section, the approximate horizontal location of the underground facilities is a strip of land two feet [60.96 centimeters] on either side of the underground facilities..."

Advocacy Staff concluded that MDU violated NDCC section 49-23-04(6)(b) by failing to mark its underground facility within 24 inches horizontally.

MDU 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, MDU agrees to be assessed a civil penalty of \$7,500, with \$2,500 suspended on condition that MDU commits no further violation of the North Dakota One-Call Law (North Dakota Century Code chapter 49-23) within three years of the date of an Order accepting the Consent Agreement. MDU will make \$5,000 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 Montana-Dakota Utilities Co. and Advocacy Staff, filed with the Commission on July 21, 2021, is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. Montana-Dakota Utilities Co. is assessed a civil penalty of \$7,500.
3. Montana-Dakota Utilities Co. shall remit \$5,000 civil penalty, payable to the North Dakota Public Service Commission, within ten business days of service of this Order. The remaining \$2,500 civil penalty is suspended on condition that MDU 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 MDU violated North Dakota One-Call Law within five years of the date of this Order, MDU shall remit the suspended portion of the penalty,

\$2,500, 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. Complainant,)	Case No. PU-21-142
)	
Montana-Dakota Utilities Co.,)	CONSENT AGREEMENT
Respondent .)	

Preliminary Statement

This Consent Agreement is entered into by and between Montana-Dakota Utilities Co. (MDU) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket No. PU-21-142.

On April 14, 2021, the Commission received a ND One-Call Complaint from Central Trenching, Inc. (Central). The complaint alleged a violation by MDU of North Dakota Century Code (NDCC) section 49-23-04(6)(b) by failing to mark its underground facility within 24 inches horizontally.

On April 20, 2021, Commission staff issued a letter informing MDU of Central's complaint filing and requested a response by May 4, 2021. MDU's April 22, 2021 response agreed that MDU did not locate and mark its underground facility 24 inches horizontally.

On May 7, 2020 Central personnel provided an excavation notice to the North Dakota One Call Notification Center (NDOC), with work to begin on May 12, 2020. The

NDOC assigned locate ticket number 20037761 to the excavation notice, which indicates the work was installing underground cable at the intersection of 37th Ave SW and 4th St SW in Minot, ND.

On May 19, 2020 at approximately 10:52 am Central began its excavation in the location cited in the excavation notice. As a result of the excavation, MDU's 2 inch natural gas main line was damaged approximately 9 feet from the nearest locate marks.

NDCC section 49-23-04(6)(b) states "For purposes of this section, the approximate horizontal location of the underground facilities is a strip of land two feet [60.96 centimeters] on either side of the underground facilities..."

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

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

1. MDU violated NDCC section 49-23-04(6)(b) by failing to mark its underground facility within 24 inches horizontally.
2. MDU agrees to be assessed a civil penalty of \$7,500, MDU agrees to remit \$5,000 of the \$7,500, 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 \$2,500 civil penalty is suspended on the

condition that MDU commits no further violation of the NDCC section 49-23 within three years of the date of the Order.

3. In the event the Commission finds MDU violated NDCC section 49-23 within three years of the date of the Order, MDU 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 three years of the date of the Order there is no subsequent violation of the NDCC section 49-23 by MDU, the remaining \$2,500 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. MDU 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, MDU 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 MDU and bind MDU for purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 20th 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 20th day of July, 2021

Montana-Dakota Utilities Co.

By: 

Name: PAT DARVAS