

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
JP Hager Enterprises, LLC
Damage Prevention Enforcement**

Case No. PU-21-338

ORDER ON CONSENT AGREEMENT

January 18, 2022

Preliminary Statement

On July 26, 2021, the Commission received a ND One-Call Complaint (Complaint) from Otter Tail Power Company (OTP) alleging a violation by JP Hager Enterprises, LLC (JP) of North Dakota Century Code (NDCC) chapter 49-23: One-Call Excavation Notice System.

On July 28, 2021, the Commission sent a letter to JP enclosing the July 26, 2021, Complaint, requesting a response by August 11, 2021.

On September 2, 2021, JP responded to the Complaint.

On November 1, 2021, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy Staff) and JP was filed for the resolution of the Complaint.

Discussion

JP Hager Enterprises, LLC is a domestic limited liability company with a principal address of 521 6th St E, Harvey, ND 58341.

On or about June 28, 2021, JP personnel began excavations as defined in NDCC section 49-23-01(7) while performing concrete installation at 909 Lincoln Ave, 109 Brewster St W, and 209 9th St E in Harvey, ND. There is no evidence of JP personnel contacting the North Dakota One Call Notification Center prior to beginning these excavations. No damage resulted from JP's excavations.

The Complaint alleges violations by JP of North Dakota Century Code (NDCC) section 49-23-04(1) by failing to provide an excavation or location notices before beginning any excavation.

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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.

JP's September 2, 2021, response confirmed that it did not have valid excavation or location notices prior to beginning its excavations.

Having investigated the alleged violations, Advocacy Staff believes that JP violated NDCC section 49-23-04(1) in all three locations cited above.

JP 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, JP agrees to be assessed a civil penalty of \$1,500, with \$1,000 suspended on condition that JP 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. The Commission finds the penalty provision of the Consent Agreement is insufficient.

Having considered this matter, the Commission finds the Consent Agreement is not reasonable and is unacceptable. Therefore, the Commission issues the following:

Order

The Commission Orders the Consent Agreement between JP Hager Enterprises, LLC and Advocacy Staff filed with the Commission on November 1, 2021, is denied without prejudice.

PUBLIC SERVICE COMMISSION



Randy Christmann
Commissioner



Julie Fedorchak
Chair

Vacant