

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
McLaughlin Construction Co.
Damage Prevention Enforcement**

Case No. PU-21-435

ORDER ON CONSENT AGREEMENT

February 2, 2022

Preliminary Statement

On November 23, 2021, the Commission received a ND One-Call Complaint (Complaint) from Val-Ed Joint Venture LLP dba 702 Communications (702) alleging a violation by McLaughlin Construction Co. (McLaughlin) of North Dakota Century Code (NDCC) chapter 49-23: One-Call Excavation Notice System.

On November 29, 2021, the Commission sent a letter to McLaughlin enclosing the November 23, 2021, Complaint, requesting a response by December 13, 2021.

On December 27, 2021, McLaughlin responded to the Complaint.

On January 10, 2022, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy Staff) and McLaughlin was filed for the resolution of the Complaint.

Discussion

McLaughlin Construction Co. is a domestic corporation with a principal address of 1606 Maple Pl, West Fargo, ND 58078.

On October 15, 2021, McLaughlin personnel contacted the North Dakota One Call Notification Center (NDOC) and provided an excavation notice for 2000 21st Ave S, West Fargo, ND. The NDOC assigned ticket number 21141576 to the excavation notice, which states the work to begin date was October 20, 2021, and the type of work was drilling piers for decks. Under NDCC section 49-23-04(6)(g), the expiration date for the ticket was November 10, 2021.

On November 23, 2021, McLaughlin began an excavation as defined in NDCC section 49-23-01(7) while drilling holes for deck piers at the location cited in the excavation notice. As a result of this excavation, damage was caused to 702's 24 strand fiber

optic cable. 702 stated the cost of the damage was approximately \$500. Four customers were affected by the incident.

The Complaint alleges a violation by McLaughlin of NDCC section 49-23-04(6)(g) for using a location for more than twenty-one days after the planned excavation date.

NDCC section 49-23-04(6)(g) states that an excavator may not use a location more than twenty-one days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected.

Having investigated the alleged violations, Advocacy Staff believes that McLaughlin violated NDCC section 49-23-04(6)(g).

McLaughlin 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, McLaughlin agrees to be assessed a civil penalty of \$1,000, with \$500 suspended on condition that McLaughlin 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.

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 McLaughlin Construction Co. and Advocacy Staff filed with the Commission on January 10, 2022, is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. McLaughlin is assessed a civil penalty of \$1,000.
3. McLaughlin shall remit \$500 civil penalty, payable to the North Dakota Public Service Commission, within ten business days of service of this Order. The remaining \$500 civil penalty is suspended on condition that McLaughlin 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 McLaughlin violated North Dakota One-Call Law within five years of the date of this Order, McLaughlin shall remit the suspended

portion of the penalty, \$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

Vacant

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	Case No. PU-21-435
vs.)	
)	CONSENT AGREEMENT
McLaughlin Construction Co.,)	
Respondent .)	

Preliminary Statement

This Consent Agreement is entered into by and between McLaughlin Construction Co. (McLaughlin) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket No. PU-21-435.

On November 23, 2021, the Commission received a ND One-Call Complaint from 702 Communications. (702). The complaint alleged a violation by McLaughlin of North Dakota Century Code (NDCC) section 49-23-04(6)(g) for using a location for more than twenty-one days after the planned excavation date.

On November 29, 2021, Commission staff issued a letter informing McLaughlin of 702's complaint filing and requested a response by December 13, 2021. McLaughlin's December 27, 2021, response agreed that McLaughlin was excavating after the expiration of the twenty-one day excavation period, however McLaughlin's response stated that they did not see marks for 702's underground facilities in the planned excavation area during the excavation period.

On October 15, 2021, McLaughlin personnel contacted the North Dakota One Call Notification Center (NDOC) and provided an excavation notice for 2000 21st Ave S, West Fargo, ND. The NDOC assigned ticket number 21141576 to the excavation notice, which states the work to begin date as October 20, 2021, and the type of work as drill piers for decks. Per NDCC section 49-23-04(6)(g), the expiration date for the ticket was November 10, 2021.

On November 23, 2021, McLaughlin began an excavation as defined in NDCC section 49-23-01(7) while drilling holes for deck piers at the location cited in the excavation notice. As a result of this excavation, damage was caused to 702's 24 strand fiber optic cable. 702 stated the cost of the damage was approximately \$500.

NDCC section 49-23-04(6)(g) states that an excavator may not use a location more than twenty-one days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected.

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

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

1. McLaughlin violated NDCC section 49-23-04(6)(g) for using a location for more than twenty-one days after the planned excavation date.

2. McLaughlin agrees to be assessed a civil penalty of \$1000. McLaughlin agrees to remit \$500 of the \$1000, 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 \$500 civil penalty is suspended on the condition that McLaughlin 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 McLaughlin violated the NDCC section 49-23 within five years of the date of the Order, McLaughlin 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 McLaughlin, the remaining \$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. McLaughlin 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, McLaughlin 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 McLaughlin and bind McLaughlin for purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 10th day of January, 2022

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 _____ day of _____, 2022

McLaughlin Construction Co

By:  _____

Name: Jon B. McLaughlin