

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Windsong Custom Homes
Damage Prevention Enforcement

Case No. GS-22-167

ORDER ON CONSENT AGREEMENT

June 29, 2022

Preliminary Statement

On April 13, 2022, the Commission received a ND One-Call Complaint (Complaint) from Montana-Dakota Utilities Co. (MDU) alleging a violation by Windsong Custom Homes (Windsong) of North Dakota Century Code (NDCC) chapter 49-23: One-Call Excavation Notice System.

On April 19, 2022, Commission staff sent a letter to Windsong enclosing the April 13, 2022 Complaint, requesting a response by May 4, 2022.

On April 29, 2022, Windsong responded to the Complaint.

On May 24, 2022, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy Staff) and Windsong was filed for the resolution of the Complaint.

Discussion

Windsong Custom Homes is a trade name associated with the domestic corporation Windsong Contracting LLC with a principal address of PO Box 11244, Williston, ND 58801.

On April 8, 2022, Windsong began an excavation as defined in N.D.C.C. § 49-23-01(7) while performing site development with an auger in a new housing development at 2702 30th Street West, Williston, North Dakota. During the excavation, Windsong struck a 2-inch natural gas one-way main line operated by MDU which provides service to a single residence currently under construction. Zero customers were affected, and the damage is estimated to be approximately \$800.

There is no evidence of Windsong contacting the North Dakota One Call Notification Center prior to beginning this excavation.

N.D.C.C. § 49-23-04(1) states: “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 Windsong violated N.D.C.C. § 49-23-04(1).

Windsong 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, Windsong agrees to be assessed a civil penalty of \$1,600, with \$800 suspended on condition that Windsong 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:

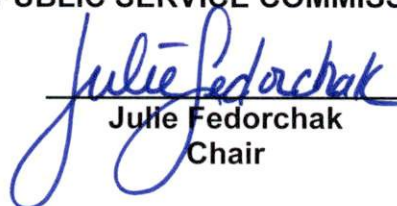
Order

The Commission Orders:

1. The Consent Agreement between Windsong Custom Homes and Advocacy Staff filed with the Commission on May 24, 2022, is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. Windsong is assessed a civil penalty of \$1,600.
3. Windsong shall remit the \$800 civil penalty, payable to the North Dakota Public Service Commission, within ten business days of service of this Order. The remaining \$800 civil penalty is suspended on condition that Windsong 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 Windsong violated North Dakota One-Call Law within five years of the date of this Order, Windsong shall remit the suspended portion of the penalty, \$800, 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


Sheri Haugen-Hoffart
Commissioner

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	Case No. GS-22-167
vs.)	
)	CONSENT AGREEMENT
Windsong Custom Homes,)	
)	
Respondent.)	

This Consent Agreement is entered into by and between Windsong Custom Homes (Windsong) and the Public Service Commission (Commission) Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket No. GS-22-167.

On April 13, 2022, the Commission received a ND One-Call Complaint from Montana-Dakota Utilities Co. (MDU). The complaint alleged a violation by Windsong of North Dakota Century Code (N.D.C.C.) § 49-23-04(1) for failing to provide an excavation or location notice before beginning any excavation subsequently damaging a 2-inch natural gas line.

On April 19, 2022, Commission staff issued a letter informing Windsong of MDU's complaint filing and requested a response by May 4, 2022.

On April 29, 2022, Staff received a response from Windsong agreeing that Windsong failed to provide an excavation or location notice prior to beginning an excavation at this location.

On April 8, 2022, Windsong began an excavation as defined in N.D.C.C. § 49-23-01(7) while performing site development with an auger in a new housing development at 2702 30th Street West, Williston, North Dakota. There is no evidence of Windsong contacting the North Dakota One Call Notification Center prior to beginning this excavation. Windsong struck a 2-inch natural gas one-way main line operated by MDU which provides service to a single residence currently under construction. Zero customers were affected, and the damage is estimated to be approximately \$800.

N.D.C.C. § 49-23-04(1) states: "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 Windsong violated N.D.C.C. § 49-23-04(1).

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

1. Windsong violated N.D.C.C. § 49-23-04(1) by failing to provide an excavation or location notice before beginning any excavation.
2. Windsong agrees to be assessed a civil penalty of \$1,600. Windsong agrees to remit \$800 of the \$1,600, payable to the North Dakota Public Service Commission

within ten business days of service of an Order accepting or approving the Consent Agreement. The remaining \$800 civil penalty is suspended on the condition that Windsong commits no further violation of N.D.C.C. Chapter 49-23 within five years of the date of the Order.

3. In the event the Commission finds Windsong violated N.D.C.C. Chapter 49-23 within five years of the date of the Order, Windsong 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 N.D.C.C. Chapter 49-23 by Windsong, the remaining \$800 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 this case.
6. Windsong 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 Commission adopts this Consent Agreement and issues an Order consistent with it, Windsong 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 Windsong and bind Windsong for purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 24th day of May, 2022

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 18 day of MAY, 2022

Windsong Custom Homes

By: _____


Mike Dolbec (Owner)