

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

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<b>PUBLIC SERVICE COMMISSION,</b>	)	
	)	
<b>Complainant,</b>	)	<b>Case No. GS-22-197</b>
<b>vs.</b>	)	
	)	<b>CONSENT AGREEMENT</b>
<b>Norwest Concrete,</b>	)	
	)	
<b>Respondent.</b>	)	

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**Preliminary Statement**

This Consent Agreement is entered into by and between Norwest Concrete (Norwest) and the Public Service Commission (Commission) Advocacy Staff (Staff) (together, the Parties) for resolution of Docket No. GS-22-197.

On May 19, 2022, the Commission received a ND One-Call Complaint from Terry and Betty Clementich (the Clementich's). The complaint alleged a violation by Norwest 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 the electrical cable leading to the Clementich's residence resulting in a power failure.

On May 20, 2022, Commission Staff issued a letter informing Norwest of the Clementich's complaint filing and requested a response by June 3, 2022.

On May 26, 2022, Staff received a response from Norwest agreeing that Norwest failed to provide an excavation or location notice prior to beginning an excavation at this location.

## **Discussion**

On June 25, 2020, Norwest began an excavation as defined in N.D.C.C. § 49-23-01(7) while performing concrete step installation and hand digging post holes at 1101 23rd Street Northwest, Minot, North Dakota. There is no evidence of Norwest contacting the North Dakota One Call Notification Center prior to beginning this excavation. During the excavation, Norwest struck and damaged the electrical line which provides electrical service to the Clementich's residence. Electrical service is provided by Xcel Energy.

In October 2020, the Clementich's lost power in half of their residence. The Clementich's called Xcel Energy who determined the power failure was caused by damage to the electrical line. Norwest claims no knowledge of the damage caused to the electrical line until Xcel Energy billed Norwest \$550 for the repair. Norwest states they paid the repair bill.

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 Norwest violated N.D.C.C. § 49-23-04(1).

## **Agreement**

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. Norwest violated N.D.C.C. § 49-23-04(1) by failing to provide an excavation or location notice before beginning any excavation.
2. Norwest agrees to be assessed a civil penalty of \$1,000.
3. Norwest agrees to remit \$500 of the \$1,000, payable to the North Dakota Public Service Commission within ten (10) business days of service of an Order accepting or approving the Consent Agreement. The remaining \$500 civil penalty is suspended on the condition that Norwest commits no further violation of N.D.C.C. Chapter 49-23 within five (5) years of the date of the Order.
4. In the event the Commission finds Norwest violated N.D.C.C. Chapter 49-23 within five (5) years of the date of the Order, Norwest 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.
5. If within five (5) years of the date of the Order there is no subsequent violation of N.D.C.C. Chapter 49-23 by Norwest, the remaining \$500 penalty is withdrawn.
6. 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.
7. Norwest 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, Norwest 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.

8. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement and Order.
9. 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.
10. The undersigned is authorized to act on behalf of Norwest and bind Norwest for purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 23<sup>rd</sup> day of June, 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 20<sup>th</sup> day of June, 2022

Norwest Concrete

By: \_\_\_\_\_

Mike Small (Owner)