

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Norwest Concrete
Damage Prevention Enforcement**

Case No. GS-22-197

ORDER ON CONSENT AGREEMENT

July 14, 2022

Preliminary Statement

On May 19, 2022, the Commission received a ND One-Call Complaint (Complaint) from Terry and Betty Clementich (the Clementich's) alleging a violation by Norwest Concrete (Norwest) of North Dakota Century Code (N.D.C.C.) chapter 49-23: One-Call Excavation Notice System.

On May 20, 2022, Commission Staff sent a letter to Norwest enclosing the May 19, 2022 Complaint, requesting a response by June 3, 2022.

On May 26, 2022, Norwest responded to the Complaint.

On June 23, 2022, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy Staff) and Norwest was filed for the resolution of the Complaint.

Discussion

Norwest Concrete is a trade name owned by Mike Small with a principal address of 2022 4th Avenue NW, Minot, ND 58703-2966.

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. During the excavation, Norwest struck and damaged the electrical line which provides electrical service to the Clementich's residence. 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.

There is no evidence of Norwest 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 Norwest violated N.D.C.C. § 49-23-04(1).

Norwest 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, Norwest agrees to be assessed a civil penalty of \$1,000, with \$500 suspended on condition that Norwest 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 Norwest Concrete and Advocacy Staff filed with the Commission on June 23, 2022, is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. Norwest is assessed a civil penalty of \$1,000.
3. Norwest shall remit the \$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 Norwest 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 Norwest violated North Dakota One-Call Law within five years of the date of this Order, Norwest 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


Sheri Haugen-Hoffart
Commissioner

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	
)	
vs.)	Case No. GS-22-197
)	
Norwest Concrete,)	CONSENT AGREEMENT
)	
Respondent.)	

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 23rd 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 20th day of June, 2022

Norwest Concrete

By: 

Mike Small (Owner)