



Public Service Commission

State of North Dakota

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April 6, 2023

Mr. Steve Kahl
Executive Secretary
North Dakota Public Service Commission
600 E Boulevard Ave Dept 408
Bismarck ND 58505-0480

via Hand Delivery

Re: Case No. DM-22-369
Public Service Commission
Cable One, Inc. dba Sparklight
Damage Prevention Enforcement

Dear Mr. Kahl:

Enclosed is a copy of the Consent Agreement to be filed in the above captioned case.

Best regards,

A handwritten signature in blue ink, appearing to read "Brian Johnson".

Brian Johnson
Legal Counsel

Enclosure

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

**Public Service Commission
Cable One, Inc. dba Sparklight
Damage Prevention Enforcement**

Case No. DM-22-369

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	
)	
vs.)	CONSENT AGREEMENT
)	
)	
Cable One, Inc. dba Sparklight)	
)	
Respondent.)	

This Consent Agreement is entered into by and between Cable One, Inc. dba Sparklight (Sparklight) and the Public Service Commission (Commission) Advocacy Staff (Staff) (together, the Parties) for resolution of Case No. DM-22-369.

Discussion

On September 19, 2022, the Commission received a North Dakota One-Call Complaint from Merritt Landscape Design (Merritt). The complaint alleges Sparklight violated North Dakota Century Code (N.D.C.C.) § 49-23-04(6)(a) of the One-Call Excavation Notice System by failing to locate and mark the approximate horizontal location of underground facilities.

On September 8, 2022, Merritt provided an excavation notice to the North Dakota One-Call Notification Center (NDOC) with a work to begin date of September 13, 2022.

NDOC assigned ticket number 22114251 to the excavation notice, which indicated the type of work to be performed was "install irrigation system."

On September 9, 2022, Sparklight marked their underground facilities as documented on NDOC ticket number 22114251.

On September 15, 2022, Merritt was conducting an excavation as defined in N.D.C.C. § 49-23-01(7) while performing an irrigation system installation at 2308 Main Avenue West, West Fargo, North Dakota when Merritt struck and damaged a fiber optic line providing internet service to a single business, Northern Plains Distributing (NPD).

On October 11, 2022, Staff issued a letter informing Sparklight of the complaint filed by Merritt.

On October 31, 2022, Staff received a response from Sparklight providing information that Sparklight's contracted utility locating service failed to locate Sparklight's fiber optic line providing service to NPD.

Violation 1. Failure to Mark Facility Location

N.D.C.C. § 49-23-04(6)(a) states an operator with underground facilities within the area of a location request shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator within the location period or as agreed by the parties.

While the contracted utility locating service failed to locate Sparklight's fiber optic line serving NPD, N.D.C.C. places the responsibility on the operator to locate the facilities. Therefore, Sparklight violated N.D.C.C. § 49-23-04(6)(a) by failing to locate and mark the approximate horizontal location of their fiber optic line.

Agreement


The Parties engaged in good faith settlement discussions resulting in this Consent Agreement. Staff's records indicate this was Sparklight's first violation and since Sparklight agreed to their culpability, the matter resulted in a reduced penalty amount. 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. Sparklight violated N.D.C.C. § 49-23-04(6)(a) by failing to locate and mark the approximate horizontal location of their underground facilities.
2. Sparklight agrees to be assessed a civil penalty of \$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.
3. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violations alleged in this case.
4. Sparklight 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, Sparklight 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.

5. For purposes of the identification requirement of Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), the performance is restitution, remediation, or an amount paid to come into compliance with the law. Accordingly, Sparklight agrees to provide the Commission with a U.S. Department of the Treasury Internal Revenue Service Form W-9 for this purpose.
6. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement and Order.
7. 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.
8. The undersigned is authorized to act on behalf of Sparklight and bind Sparklight for purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 6th day of April, 2023

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By: 

Brian Johnson
Special Assistant Attorney (General Bar ID 07397)
Public Service Commission
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480
701-328-2407

Dated this 4th day of April, 2023

Cable One, Inc. dba Sparklight

By: 

Cheryl Goettsche, Division Vice President