

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No. DM-22-369

ORDER ON CONSENT AGREEMENT

April 27, 2023

Preliminary Statement

On September 19, 2022, the Commission received a North Dakota One-Call Complaint (Complaint) from Merritt Landscape Design (Merritt) alleging a violation by Cable One, Inc. dba Sparklight (Sparklight) of North Dakota Century Code (N.D.C.C.) § 49-23-04(6)(a) of the One-Call Excavation Notice System.

On October 11, 2022, Commission Staff sent a letter to Sparklight enclosing the September 19, 2022, Complaint, requesting a response by October 28, 2022.

On October 31, 2022, Staff received a response from Sparklight.

On April 6, 2023, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy Staff) and Sparklight was filed for the resolution of the Complaint.

Discussion

Cable One, Inc. is a foreign corporation with a principal address of 210 East Earl Drive, Phoenix, AZ 85012-2626.

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. 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 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.

Having investigated the alleged violation, Advocacy Staff believes that Sparklight violated N.D.C.C. § 49-23-04(6)(a) for failure to mark facility location.

Sparklight 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, Sparklight agrees to be assessed a civil penalty of \$1,000.

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 Cable One, Inc. dba Sparklight and Advocacy Staff filed with the Commission on April 6, 2023, is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. Sparklight is assessed a civil penalty of \$1,000.
3. Sparklight shall remit the \$1,000 civil penalty, payable to the North Dakota Public Service Commission, within ten business days of service of this Order.
4. For identification 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. Sparklight shall provide the Commission with a U.S. Department of the Treasury Internal Revenue Service Form W-9 for the purpose of the identification requirement of 26 U.S.C. § 162(f)(2)(A)(ii) within ten business days of service of this Order.

PUBLIC SERVICE COMMISSION


Sheri Haugen-Hoffart
Commissioner


Randy Christmann
Chair


Julie Fedorchak
Commissioner

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

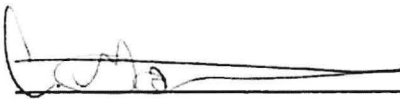
PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

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