



Public Service Commission

State of North Dakota

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March 19, 2024

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-23-305
Public Service Commission
Forest River Colony
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 be "BJ", with a long horizontal line extending to the right.

Brian Johnson
Legal Counsel

Enclosure

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

**Public Service Commission
Forest River Colony
Damage Prevention Enforcement**

Case No. DM-23-305

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	
)	
vs.)	CONSENT AGREEMENT
)	
Forest River Colony)	
)	
Respondent.)	

This Consent Agreement is entered into by and between Forest River Colony (Forest River) and the Public Service Commission (Commission) Advocacy Staff (Staff) (together, the Parties) for resolution of Case No. DM-23-305.

Preliminary Statement

On September 12, 2023, the Commission received a North Dakota One-Call Complaint (Complaint) from North Dakota Pipeline Company, LLC (Enbridge). The Complaint alleges Forest River violated North Dakota Century Code (N.D.C.C.) § 49-23-04(1) of the One-Call Excavation Notice System for failing to contact the notification center and provide an excavation or location notice before beginning an excavation.

On September 25, 2023, Staff sent a letter to Forest River enclosing the September 12, 2023, Complaint and requested a response by October 13, 2023.

On September 28, 2023, Staff received a response from Forest River stating that Forest River demolished a building forty feet north of the Enbridge pipeline and that Forest River did not place an excavation notice because they believed they were not excavating near the pipeline.

Discussion

In August 2023, Forest River began an excavation as defined in N.D.C.C. § 49-23-01(7) for the purpose of demolishing a building located at the intersection of Broadway and Front Street in Michigan, North Dakota. There is no evidence of Forest River contacting the North Dakota One-Call Operations Center (NDOC) prior to beginning this excavation.

On August 7, 2023, an Enbridge representative working in Michigan, North Dakota observed an excavator working near the right-of-way for Enbridge's Line 81 (Line 81), a 16-inch steel petroleum pipeline. The excavation consisted of demolishing a structure along with the removal of the structure's foundation. Upon review, it was noted the excavation occurred directly adjacent to Line 81. The Enbridge representative notified Forest River of the requirement to place an excavation notice with NDOC prior to beginning any excavation. The Enbridge representative also stayed onsite until the debris had been cleared from the pipeline right-of-way.

Alleged Violation:

Excavator Failed to Provide Locate Notice Prior to Beginning 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, Staff believes Forest River violated N.D.C.C. § 49-23-04(1) by failing to provide an excavation or location notice before demolishing a building and removing the building foundation.

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. Forest River violated N.D.C.C. § 49-23-04(1) by failing to provide an excavation or location notice before beginning an excavation.
2. Forest River agrees to be assessed a civil penalty of \$500.
3. Forest River agrees to remit \$250 of the \$500, 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 \$250 civil penalty is suspended on the condition that Forest River 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 Forest River violated N.D.C.C. Chapter 49-23 within five (5) years of the date of the Order, Forest River 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 Forest River, the remaining \$250 penalty is withdrawn.
6. 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.
7. Forest River consents to the filing of the Consent Agreement and an Order and hereby waives any further procedural requirements with respect to the issuance of the Order. Provided the Commission adopts this Consent Agreement and issues an Order consistent with it, Forest River 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. 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, Forest River agrees to provide the Commission with a U.S. Department of the Treasury Internal Revenue Service Form W-9 for this purpose within ten (10) business days of service of an Order accepting or approving the Consent Agreement.
9. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement and Order.
10. This agreement may be executed in counterparts and duplicate copies, each of which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.

11. The undersigned is authorized to act on behalf of Forest River and bind Forest River for the purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 19th day of March, 2024

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By: _____


Brian Johnson
Special Assistant Attorney General (Bar ID 07937)
Public Service Commission
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480
701-328-2407

Dated this 13th day of March, 2024

Forest River Colony

By: _____


Greg Maendel, Financial Manager