



# Public Service Commission

## State of North Dakota

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August 7, 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-24-20  
Public Service Commission  
Industrial Builders, Inc.  
Damage Prevention Enforcement

Case No. DM-24-21  
Public Service Commission  
Industrial Builders, Inc.  
Damage Prevention Enforcement

Dear Mr. Kahl:

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

Best regards,

Brian Johnson  
Legal Counsel

Enclosure

**BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA**

**Public Service Commission  
Industrial Builders, Inc.  
Damage Prevention Enforcement**

**Case No. DM-24-20**

**Public Service Commission  
Industrial Builders, Inc.  
Damage Prevention Enforcement**

**Case No. DM-24-21**

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<b>PUBLIC SERVICE COMMISSION,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>vs.</b>	)	<b>CONSENT AGREEMENT</b>
	)	
	)	
<b>Industrial Builders, Inc.</b>	)	
	)	
<b>Respondent.</b>	)	

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This Consent Agreement is entered into by and between Industrial Builders, Inc. (Industrial Builders) and the Public Service Commission (Commission) Advocacy Staff (Staff) (together, the Parties) for resolution of Case Nos. DM-24-20 and DM-24-21.

**Preliminary Statement**

On January 5, 2024, the Commission received two North Dakota One-Call Complaints (Complaints) from Montana-Dakota Utilities Co. (MDU). The Complaints allege Industrial Builders violated North Dakota Century Code (N.D.C.C.) § 49-23-05(5) of the One-Call Excavation Notice System by failing to conduct an excavation in a careful and prudent manner.

On March 7, 2024, Staff sent a letter to Industrial Builders enclosing both January 5, 2024, Complaints and requested a response by April 2, 2024.

On March 26, 2024, Staff received a response from Industrial Builders acknowledging that while Industrial Builders did strike both lines, Industrial Builders' excavation fell under the road maintenance exemption found in N.D.C.C. § 49-23-01(7)(d) because work being performed was normal maintenance of roads and streets and the maintenance did not change the original grade and did not involve the road ditches. Additionally, Industrial Builders alleges that both MDU lines were buried too shallow. Industrial Builders did state "[a]lthough we were not required to make a locate request, we did anyway as a precautionary measure."

### **Discussion**

On October 10, 2023, Industrial Builders provided four excavation notices to North Dakota One-Call Notification Center (NDOC), to provide cement stabilization to a depth of five feet to support the reconstruction of four sections of city streets in Glen Ullin, North Dakota. NDOC assigned ticket numbers 23132579, 23132580, 23132581, and 23132582 to the cement stabilization project.

On October 11, 2023, MDU marked their facilities in response to NDOC ticket numbers 23132579, 23132580, 23132581, and 23132582.

On October 12, 2023, Industrial Builders struck a 3/4-inch gas line providing service to one residence located at 410 D Street South, Glen Ullin, North Dakota causing \$1,293.59 in damage. Industrial Builders notified MDU of the line strike; however, Industrial Builders did not call 911. MDU responded, shutting the gas off and making the necessary repairs. Service was restored the same day.

On October 14, 2023, an MDU customer located at 204 G Street South, Glen Ullin, North Dakota contacted MDU stating that both their furnace and hot water heater were not functioning. MDU dispatched a technician who investigated the no gas situation and found that the 3/4-inch gas line servicing the residence had been sheared off by Industrial Builders during the cement stabilization project causing \$575.97 in damage. Industrial Builders stated that their equipment operator did not know that they struck this line. This statement is supported by MDU. MDU stated this service line has an emergency flow valve (EFV) which will automatically close if the EFV senses an extreme drop in pressure and so a release of pressure from the line would not be noticed.

#### **Alleged Violation 1:**

##### **Excavator Failed to Conduct the Excavation in a Careful and Prudent Manner**

N.D.C.C. § 49-23-05(5) states in part that “[t]o avoid damage to and minimize interference with underground facilities in and near the excavation area, a ticket holder shall: . . . [c]onduct the excavation in a careful and prudent manner.”

While Industrial Builders is claiming the road maintenance exemption found in N.D.C.C. § 49-23-01(7)(d), Industrial Builders called in excavation notices and operators marked the underground facilities; therefore, Industrial Builders has a responsibility to protect those facilities. Furthermore, N.D.C.C. Chapter 49-23 does not specify minimum depths facilities are allowed to be buried.

Having investigated the alleged violation, Staff believes Industrial Builders violated N.D.C.C. § 49-23-05(5) by failing to conduct the excavation in a careful and prudent manner.

## **Alleged Violation 2:**

### **Excavator Failed to Call 911**

N.D.C.C. § 49-23-06(1)(a) states in part “[i]f the damage results in the escape of flammable, toxic, or corrosive gas or liquid, the excavator shall (1) [c]all 911 immediately.”

There is no evidence of Industrial Builders contacting 911 after striking the gas line on October 12, 2023.

Having investigated the alleged violation, Staff believes Industrial Builders violated N.D.C.C. § 49-23-06(1)(a) by failing to contact 911 after striking the MDU gas line.

### **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. Industrial Builders violated N.D.C.C. § 49-23-05(5) by failing to conduct an excavation in a careful and prudent manner and N.D.C.C. § 49-23-06(1)(a) by failing to contact 911 after the damage resulted in the escape of flammable gas.
2. Industrial Builders agrees to be assessed a civil penalty of \$2,500.
3. Industrial Builders agrees to remit \$1,500 of the \$2,500, 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 \$1,000 civil penalty is suspended on the condition that Industrial Builders commits no further violations 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 Industrial Builders violated N.D.C.C. Chapter 49-23 within five (5) years of the date of the Order, Industrial Builders 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 Industrial Builders, the remaining \$1,000 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. Industrial Builders 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, Industrial Builders 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, Industrial Builders 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 Industrial Builders and bind Industrial Builders for the purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 7<sup>th</sup> day of August, 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 7th day of August, 2024

Industrial Builders, Inc.

By: 

Brian Meyer, Senior Project Manager