

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Capital City Construction, Inc.
Damage Prevention Enforcement**

Case No. DM-24-230

ORDER ON CONSENT AGREEMENT

December 4, 2024

Preliminary Statement

Capital City Construction, Inc. (Capital) is a domestic corporation with a principal address of 1501 East Calgary Avenue, Bismarck, North Dakota 58503 and a mailing address of PO Box 7337, Bismarck, North Dakota 58507-7337.

On June 10, 2024, the Commission received a North Dakota One-Call Complaint (Complaint) from CenturyLink Communications, LLC (CenturyLink) alleging a violation by Capital of North Dakota Century Code (N.D.C.C.) § 49-23-05(5) for failing to conduct the excavation in a careful and prudent manner.

On June 24, 2024, Capital provided a response to the Complaint stating that while Capital did remove a CenturyLink telecommunications pedestal, Capital believed the telephone lines were relocated and abandoned due to a notation on the construction plans.

On November 20, 2024, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy Staff) and Capital was filed for the resolution of the Complaint.

Discussion

During Advocacy Staff's investigation, it was determined that Capital excavated outside the area identified on their excavation notice, in addition to failing to excavate in a careful and prudent manner.

N.D.C.C. § 49-23-04(2) states "Unless otherwise exempted, the ticket request must include site identification information by one or more of the following means: white marking, digital white lining, project staking, geographic information system shape file, detailed drawing, map, or other means agreed upon by the parties to the ticket."

N.D.C.C. § 49-23-05 states "To avoid damage to and minimize interference with underground facilities in and near the excavation area, a ticket holder shall: . . . 5. conduct the excavation in a careful and prudent manner."

Capital and Advocacy Staff engaged in good faith settlement discussions resulting in a Consent Agreement intended to avoid further administrative proceedings or litigation.

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 Capital and Advocacy Staff filed with the Commission on November 20, 2024, is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. Capital is assessed a civil penalty of \$1,500 with \$750 suspended, on the condition Capital commits no further violation of N.D.C.C. Chapter 49-23 within five years of the date of the Order.
3. Capital shall remit the \$750 civil penalty, payable to the North Dakota Public Service Commission, within ten business days of service of this Order.
4. In the event the Commission finds Capital violated N.D.C.C. Chapter 49-23 within five years of the date of the Order, Capital shall remit the suspended portion of the penalty within the time ordered by the Commission, in addition to any fines or penalties imposed for the subsequent violation.
5. 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. Capital 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
Capital City Construction, Inc.
Damage Prevention Enforcement**

Case No. DM-24-230

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	
)	
vs.)	CONSENT AGREEMENT
)	
)	
Capital City Construction, Inc.)	
)	
Respondent.)	

This Consent Agreement is entered into by and between Capital City Construction, Inc. (Capital) and the Public Service Commission (Commission) Advocacy Staff (Staff) (together, the Parties) for resolution of Case No. DM-24-230.

Preliminary Statement

On June 10, 2024, the Commission received a North Dakota One-Call Complaint (Complaint) from CenturyLink Communications, LLC (CenturyLink). The Complaint alleges Capital violated North Dakota Century Code (N.D.C.C.) § 49-23-05(5) of the One-Call Excavation Notice System by failing to conduct the excavation in a careful and prudent manner.

On June 13, 2024, Staff sent a letter to Capital enclosing the Complaint.

On June 24, 2024, Staff received a response from Capital stating that while Capital did remove a CenturyLink telecommunications pedestal (PED) Capital believed the

telephone lines were relocated and abandoned due to a notation on the construction prints.

Discussion

On May 17, 2024, Capital renewed an excavation notice with the North Dakota One-Call Notification Center (NDOC) for parking lot repair at 711 6th Avenue SW, Mandan, North Dakota. The location of work provided by Capital stated, "Area within fence line on north and south, east boundary are buildings, west boundary is parcel line." NDOC assigned ticket number 24043716.

On May 21, 2024, CenturyLink marked their facilities in response to ticket number 24043716.

On June 6, 2024, Capital was conducting an excavation outside of the south property fence line and removed the PED, incorrectly assuming the facility was abandoned due to the construction prints stating, "CenturyLink line to be relocated existing line abandoned in place." Upon further examination, it is noted that the notation is identifying a CenturyLink facility that runs from north to south on the property and that the PED is not identified on the prints.

Violation:

N.D.C.C. § 49-23-04(2) states "Unless otherwise exempted, the ticket request must include site identification information by one or more of the following means: white marking, digital white lining, project staking, geographic information system shape file, detailed drawing, map, or other means agreed upon by the parties to the ticket."

N.D.C.C. § 49-23-05 states "To avoid damage to and minimize interference with underground facilities in and near the excavation area, a ticket holder shall: . . . 5. conduct the excavation in a careful and prudent manner."

Having investigated the alleged violation, Staff believes Capital violated N.D.C.C. §§ 49-23-04(2) and 49-23-05(5) by failing to provide accurate site identification information and by failing to conduct the excavation in a careful and prudent manner.

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. Capital violated N.D.C.C. §§ 49-23-04(2) and 49-23-05(5) by failing to provide accurate site identification information and by failing to conduct the excavation in a careful and prudent manner.
2. Capital agrees to be assessed a civil penalty of \$1,500.
3. Capital agrees to remit \$750 of the \$1,500, 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 \$750 civil penalty is suspended on the condition that Capital commits no further violations of N.D.C.C. Chapter 49-23 within five (5) years of the date of the Order.
4. 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.

5. Capital 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, Capital 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.
6. 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, Capital 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.
7. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement and Order.
8. 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.
9. The undersigned is authorized to act on behalf of Capital and bind Capital for the purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 20th day of November, 2024

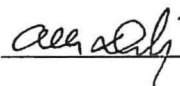
PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

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 20th day of November, 2024

Capital City Construction, Inc.

By: _____

Allen Darling, Field Supervisor
Capital City Construction, Inc.
P.O. Box 7337
Bismarck, ND 58507-7337