



Cass Rural Water Users District

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Greetings:

This letter serves as a formal response to the North Dakota One-Call Complaints filed by North Central Service, Inc. (“NCS”) against Cass Rural Water Users District (“Cass Rural”), to wit: Case Numbers DM-24-314 (June 5, 2024, incident), DM-24-315 (May 28, 2024, incident), DM-24-316 (July 8, 2024, incident), and DM-24-317 (July 10, 2024, incident).

In each of their complaints, NCS claims, “At no time prior to NCS commencing its activities did CRWD notify NCS that its water facilities were installed prior to August 1, 2013 or that CRWD was unable to locate its facilities.” See, e.g., Case Number DM-24-314, Attachment A to Complaint. **This is simply not true.** At the beginning of the project, Cass Rural’s operator, Lucas Ott, communicated with Brian Lundborg of NCS regarding the age of the lines which posed a challenge in providing exact locations. Mr. Ott offered his assistance to Mr. Lundborg in locating the water lines, provided NCS had a backhoe on-site to find the trench. Additionally, after the first water line was hit on May 28, 2024, I spoke with representatives from BEK and Finley Engineering—the engineers for the NCS project—and informed them of the age of the pipes and the related difficulty in locating those lines within two feet of accuracy. In my conversations with BEK and Finley, I pleaded with them to hold NCS to a 42-inch excavation depth so that future water line damage would not occur. Willie Reis, Cass Rural’s Chief System Operator, contacted Michael at NCS to communicate my concerns.

Apparently, NCS did not heed my warnings, because NCS damaged Cass Rural’s water lines on three further occasions. The constant feedback that Cass Rural has received from NCS and its contractors is that the project is on a tight timeline due to federal grants. This may be true, but it is not an acceptable excuse for careless excavation and the dismissal of Cass Rural’s concerns regarding the locations of its water lines.

Section 49-23-04(6)(a) of the North Dakota Century Code requires operators with underground facilities to “locate and mark or otherwise provide the approximate horizontal location of the underground facilities.” A different subsection of the same statute provides:

When an operator cannot establish the exact location of the underground facility to convey water, the operator shall mark the location as accurately as possible and the excavator may proceed with caution. When excavation operations approach the estimated location of the underground facility to convey water, the exact location of the facility must be determined by safe and acceptable means. The uncovered facility must be supported and protected to prevent damage.

N.D.C.C. 49-23-04(6)(c) (emphasis added). Section 49-23-04(6)(k), N.D.C.C., states, “If in the course of excavation the excavator is unable to locate the underground facility or discovers that

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We are an Equal Opportunity Provider and Employer



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the operator of the underground facility has incorrectly located the underground facility, the excavator shall promptly notify the operator or, if unknown, the one-call notification center.”

Cass Rural complied with these statutory provisions by communicating with NCS and its engineers regarding the age of the water lines and the associated difficulty in providing exact locations for them, and even offered assistance in further narrowing down locations. However, in the four instances in which NCS struck Cass Rural’s facilities, NCS failed to comply with North Dakota law because they did not “proceed with caution” nor did they determine the exact location of the facility “by safe and acceptable means” when excavation operations approached the estimated location of the water lines. NCS could have easily avoided these incidents had they taken the time to reach out to Cass Rural. Furthermore, NCS did not notify Cass Rural when it was unable to locate the underground facilities as NCS should have done when it became clear that the facilities were not in the approximate locations marked by Cass Rural. These reasons alone are sufficient for the complaints lodged by NCS against Cass Rural to be dismissed and Cass Rural’s complaints against NCS to be validated.

North Dakota law also provides specific precautions that excavators must take when conducting operations near underground facilities. See N.D.C.C. 49-23-05. For example, excavators should “[m]aintain a clearance between an underground facility and the cutting edge or point of any mechanized equipment, considering the known limit of control of the cutting edge or point to avoid damage to the facility” and “[c]onduct the excavation in a careful and prudent manner.” Id. at sub. (1) and (5). To comply with these precautions, NCS should have been excavating and/or boring at a safe depth relating to water lines (*i.e.*, under five feet), and they should have looked for the water lines before excavating and/or boring at questionable depths (with which Cass Rural had already expressed a willingness to assist). During the July 10 incident, for example, NCS was drilling a fiber duct at a depth of approximately six feet. See Case Number DM-24-317, Attachment A to Complaint. Unsurprisingly, this irresponsible practice resulted in damage to Cass Rural’s water line. It is notable that in all of these incidents, NCS was able to accurately locate other utilities such as phone and electric, but not Cass Rural’s facilities. NCS should have exercised the same precautions regarding Cass Rural’s facilities as they exercised when drilling near those other utilities.

Regarding the July 10 incident, NCS claims it “promptly informed CRWD of the damage.” See Case Number DM-24-317, Attachment A to Complaint. This is a misleading statement. Cass Rural only learned of the damage to its line after receiving complaints from its customers and water users and visiting the excavation site. Only after this visit did an NCS employee inform Cass Rural of the damage. Repairs for that damage took until 1 a.m. in order to ensure continued



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water service to Cass Rural's customers. Reports of rudeness expressed by Cass Rural employees to NCS representatives are exaggerated and irrelevant to these complaints.

After the final damage incident on July 10, I called and spoke with Rob from Finley Engineering and again emphasized that NCS should be keeping their excavations to a 42-inch depth. Rob shared my frustration and said he would pass on the information. Apparently, this precaution has finally been taken by NCS, as there has been no further damage to Cass Rural's facilities.

If NCS had been operating in a safe and careful manner from the beginning of its project, all of these incidents could have easily been prevented. Cass Rural made NCS aware from the beginning that the marked locations of its water lines may not be accurate due to the age of the facilities. Given this, NCS should have taken greater efforts to locate the lines before digging—an effort in which Cass Rural expressed a willingness to share. NCS also should have exercised greater caution in its excavations when operating in proximity to water lines with indeterminate locations. On behalf of Cass Rural, I ask the Public Service Commission to dismiss the four NCS complaints against Cass Rural and to order NCS to pay for the damages caused by its imprudent excavations in violation of North Dakota law, pursuant to Cass Rural's own complaints against NCS. See Case Numbers DM-24-262, DM-24-263, DM-24-292, and DM-24-293.

Sincerely,

Brent Brinkman
Assistant Manager