



# Public Service Commission

600 East Boulevard Ave  
Dept. 408  
Bismarck, ND 58505-0480  
701-328-2400  
ndpsc@nd.gov

Sheri Haugen-Hoffart

Randy Christmann

Jill Kringstad

February 13, 2025

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-24-326  
Public Service Commission  
Storms Construction, Inc.  
Damage Prevention Enforcement

Case No. DM-24-328  
Public Service Commission  
Storms Construction, Inc.  
Damage Prevention Enforcement

Case No. DM-24-327  
Public Service Commission  
Storms Construction, 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  
Storms Construction, Inc.  
Damage Prevention Enforcement

Case No. DM-24-326

Public Service Commission  
Storms Construction, Inc.  
Damage Prevention Enforcement

Case No. DM-24-327

Public Service Commission  
Storms Construction, Inc.  
Damage Prevention Enforcement

Case No. DM-24-328

---

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

---

This Consent Agreement is entered into by and between Storms Construction, Inc. (Storms) and the Public Service Commission (Commission) Advocacy Staff (Staff) (together, the Parties) for resolution of Case Nos. DM-24-326, DM-24-327, and DM-24-328.

**Preliminary Statement**

On August 29, 2024, the Commission received three North Dakota One-Call Complaints (Complaints) from Montana-Dakota Utilities Co. (MDU). The Complaints

allege that Storms violated North Dakota Century Code (N.D.C.C.) §§ 49-23-04(6)(g), 49-23-05(3), and 49-23-05(5) of the One-Call Excavation Notice System by continuing to use an excavation notice location for more than twenty-one days, failure to maintain markings, and failing to conduct the excavation in a careful and prudent manner.

On December 30, 2024, Staff received a response from Storms acknowledging that Storms dug outside the twenty-one-day window and struck three MDU natural gas lines.

### **Discussion**

On June 3, 2024, Storms filed an excavation notice with the North Dakota One-Call Notification Center (NDOC) to install water mains in Fort Totten, North Dakota. NDOC assigned ticket number 24054915 with an expiration date of June 27, 2024.

On July 2, 2024, Storms was conducting an excavation and struck an MDU 2" natural gas main causing an outage to 30 customers. Storms acknowledged that 911 was not notified of the gas line strike.

On July 24, 2024, Storms was conducting an excavation under a valid NDOC ticket. Storms was digging in a previously excavated and backfilled area to locate a missing torque wrench when they struck the MDU 2" natural gas main causing an outage to 30 customers and the evacuation of all the tenants living in the Old Elderly Center. Storms failed to maintain locate marks. Storms did notify 911 of the gas line strike.

On August 6, 2024, Storms was probing for the gas line under a valid NDOC ticket when the probe penetrated an MDU 3/4" natural gas service line causing an outage to 1 customer. Storms acknowledged that 911 was not notified of the gas line strike.

### **Violations:**

N.D.C.C. § 49-23-04(6)(g) states that “[a]n excavator may not use a location more than twenty-one days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected.”

N.D.C.C. § 49-23-05 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: . . .3. . .use reasonable efforts to maintain markings during excavation,. . .5. [c]onduct the excavation in a careful and prudent manner.” N.D.C.C. § 49-23-01(3) states in part “[c]areful and prudent manner’ means: a. [m]anually excavating within twenty-four inches [60.96 centimeters] of the outer edges of any underground facility on a horizontal plane as located and marked by the owner or operator.”

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.”

Having investigated the alleged violations, Staff believes Storms violated N.D.C.C. §§ 49-23-04(6)(g), 49-23-05(3), 49-23-05(5), and 49-23-06(1)(a) of the One-Call Excavation Notice System by continuing to use an excavation notice location for more than twenty-one days, failing to maintain markings, failing to conduct the excavation in a careful and prudent manner, and failing to notify 911 of damage which resulted in the escape of flammable gas.

### **Agreement**

The Parties engaged in good faith settlement discussions resulting in this Consent Agreement. Having agreed that settlement of these proceedings 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. Storms violated N.D.C.C. §§ 49-23-04(6)(g), 49-23-05(3), 49-23-05(5), and 49-23-06(1)(a) of the One-Call Excavation Notice System by continuing to use an excavation notice location for more than twenty-one days, failing to maintain markings, failing to conduct the excavation in a careful and prudent manner, and failing to notify 911 of damage which resulted in the escape of flammable gas.
2. Storms agrees to be assessed a civil penalty of \$6,200.
3. Storms agrees to remit \$4,200 of the \$6,200, 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 \$2,000 civil penalty is suspended on the condition that Storms 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. Storms 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, Storms 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. Storms agrees to provide the Commission with a U.S. Department of the Treasury Internal Revenue Service Form W-9 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. The Form W-9 must be provided 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 Storms and bind Storms for the purposes of this Consent Agreement and knows and fully understands the content and effect.

[Remainder of this page intentionally left blank]

Dated this 15<sup>th</sup> day of February, 2025

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 13<sup>th</sup> day of February, 2025

Storms Construction, Inc.

By: \_\_\_\_\_

  
Jerred Storms, Owner Secretary  
Storms Construction, Inc.  
P.O. Box 1112  
Mandan, ND 58554-1112