

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**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

ORDER ON CONSENT AGREEMENT

March 5, 2025

Preliminary Statement

Storms Construction, Inc. (Storms) is a domestic corporation with a principal address of 2120 40th Avenue Southeast Suite 3, Mandan, North Dakota 58554 and a mailing address of 3801 Memorial Highway Suite 3 #107, Mandan, North Dakota 58554.

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 had one occurrence of digging outside the twenty-one-day excavation window and also striking three MDU natural gas lines.

On February 13, 2025, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy Staff) and Storms was filed for the resolution of the Complaint.

Discussion

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.

Storms 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 Storms and Advocacy Staff filed with the Commission on February 13, 2025, is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. Storms is assessed a civil penalty of \$6,200 (\$2,100 in Case No. DM-24-326, \$2,600 in Case No. DM-24-327, and \$1,500 in Case No. DM-24-328) with \$2,000 suspended, on the condition Storms commits no further violation of N.D.C.C. Chapter 49-23 within five years of the date of the Order.
3. Storms shall remit the \$4,200 civil penalty (\$1,200 in Case No. DM-24-326, \$2,000 in Case No. DM-24-327, and \$1,000 in Case No. DM-24-328), payable to the North Dakota Public Service Commission, within ten business days of service of this Order.

4. In the event the Commission finds Storms violated N.D.C.C. Chapter 49-23 within five years of the date of the Order, Storms 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. Storms agrees to provide the Commission, within ten (10) business days of service of this Order, 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.

PUBLIC SERVICE COMMISSION

Sheri Haugen-Hoffart

**Sheri Haugen-Hoffart
Commissioner**

Randy Christmann

**Randy Christmann
Chair**

Jill Kringstad

**Jill Kringstad
Commissioner**

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 15th day of February, 2025

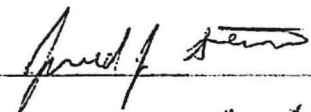
PUBLIC SERVICE COMMISSION
ADVOCACY STAFF - DAMAGE PREVENTION

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 13th day of February, 2025

Storms Construction, Inc.

By: 

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