

**A Report by the Staff of the  
Public Utilities Commission of Ohio**

In the Matter of the Application by Monte Construction for  
Reconsideration of the Decision by the Underground Technical  
Committee

Case Number 22-0259-AU-UTC

April 20, 2022

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the matter of the application by     )  
Monte Construction for                     )  
reconsideration of a decision by the    )  
Underground Technical Committee     )  
and related matters.                     )

Case No. 22-0259-AU-UTC

To the Honorable Commission,

Staff conducted an investigation of the above matter and hereby submits its findings and recommendations in its attached Staff Report.

The findings and recommendations reached in the Staff Report are presented for the Commission's consideration and do not purport to reflect the views of the Commission, nor should any party consider the Commission as bound in any manner by the findings and recommendations set forth herein.

Respectfully submitted,



Peter A. Chace  
Chief, Facility Operations & Field Division

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## **I. Background**

On March 10, 2022, Monte Construction applied for reconsideration of a February 3, 2022, decision made by the Underground Technical Committee (“UTC”) in UTC Case No. 21-00082. The UTC determined that Monte Construction failed to comply with R.C. 3781.28(A), which requires excavators to notify a utility protection service at least forty-eight hours but not more than ten working days before commencing excavation. Applications for reconsideration are described in R.C. 4913.25 and the process by which they are considered is described in the Ohio Administrative Code (OAC) 4901:1-2-15.

## **II. Staff Investigation**

On October 12, 2021, employees of Monte Construction struck a buried natural gas service line at 38445 Westminster Lane, Willoughby Ohio, operated by Dominion Energy Ohio (“Dominion”).

Staff received a request for an inquiry from Dominion on November 15, 2021. This request met the requirements of R.C. 4913.05 because Dominion fits the definition of Aggrieved Person found in R.C. 4913.01, Dominion described an alleged compliance failure of R.C. 3781.29(A)(1), and the request was made within 90 days of the alleged compliance failure. Staff then conducted an inquiry in accordance with R.C. 4913.09.

On November 19, 2021, Staff notified Monte Construction of the alleged compliance failure and gave them an opportunity to respond in accordance with R.C. 4913.05. Staff’s notice clearly stated that the decision of the UTC would be solely based on information provided by Monte Construction during Staff’s inquiry and emphasized that all documentation and information relevant to the complaint should be provided during that stage of the process, including any tickets from OHIO811 (“OHIO811 ticket”) requesting locates for a proposed excavation.

On December 18, 2021, Monte Construction responded to Staff’s notification as described in R.C. 4913.07. Monte Construction stated that they were working under a ticket called in by the Lake County Department of Utilities and that the Dominion line was unmarked, but Monte Construction did not offer any supporting documentation. Correspondence between Staff and Monte Construction is attached as Exhibit A.

On December 20, 2021, Staff completed its investigation and submitted a Report of Inquiry to the UTC as described in R.C. 4913.13. This report included all evidence provided by Dominion and Monte Construction. Staff’s Report of Inquiry is attached as Exhibit B.

On February 3, 2022, the UTC determined Monte Construction was in violation of R.C. 3781.28(A) based on the information provided in Staff’s Report of Inquiry.

On March 10, 2022, Monte Construction submitted an Application for Reconsideration. After prompting from Commission Staff, on March 23, 2022, Monte Construction submitted a copy of the OHIO811 ticket placed by the Lake County Department of Utilities on September 29, 2021, for an excavation area including 38445 Westminster Lane, Willoughby. Monte Construction did not provide this ticket during Staff’s investigation, and it therefore was not made available to the

UTC as part of Staff's Report of Inquiry. The additional information submitted by Monte Construction is provided in Exhibit C.

Dominion was notified of the application for reconsideration but did not file a memorandum contra with the Commission within 15 days as allowed under OAC 4901:1-2-15.

### **III. Conclusions and Recommendations**

Staff conducted its inquiry into the alleged violation by Monte Construction in accordance with R.C. 4913.09 and 4913.13. Staff provided the UTC with all the evidence submitted by both Monte Construction and Dominion in response to Staff's inquiry, and the UTC reached a decision based on the evidence provided. Monte Construction was given the opportunity to provide all applicable information and documentation relevant to the complaint during Staff's inquiry, which it failed to do.

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**Case No(s). 22-0259-AU-UTC**

Summary: Staff Report of Investigation In the Matter of the Application by Monte Construction for Reconsideration of the Decision by the Underground Technical Committee electronically filed by Mr. Peter A. Chace on behalf of Public Utilities Commission of Ohio