

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Vern Maddox
Damage Prevention Enforcement

Case No. GS-12-37

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Cara DeSaye deposes and says that:

she is over the age of 18 years and not a party to this action and, on the 3rd day of **August, 2012**, she deposited in the United States Mail, at Bismarck, North Dakota, **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed, containing a photocopy of:


Consent Order

The envelope was addressed as follows:

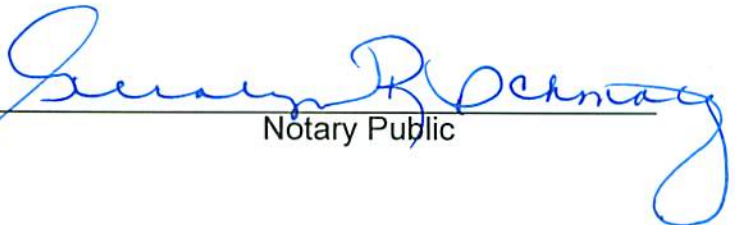
Vern Maddox
PO Box 402
Berthold ND 58718-0402

Certified No. 7011 3500 0003 4574 5278

The address shown is the respective addressee's last reasonably ascertainable post office address.

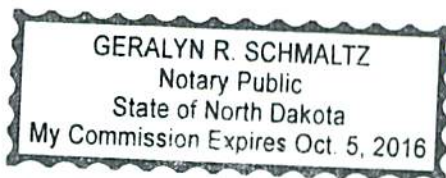


Subscribed and sworn to before me
this 3rd day of **August, 2012**



Notary Public

SEAL



and holidays, unless otherwise agreed to between the excavator and operator. If an operator determines more time is necessary for location, the operator may request a twenty-four-hour extension of the excavation or location notice by notifying the notification center. The notification center shall notify the excavator of the extension. An excavation begins the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice.

7. North Dakota Century Code section 28-32-22 states:

Unless otherwise prohibited by specific statute or rule, informal disposition may be made of any adjudicative proceeding, or any part or issue thereof, by stipulation, settlement, waiver of hearing, consent order, default, alternative dispute resolution, or other informal disposition, subject to agency approval. Any administrative agency may adopt rules of practice or procedure for informal disposition if such rules do not substantially prejudice the rights of any party. Such rules may establish procedures for converting an administrative matter from one type of proceeding to another type of proceeding.

8. North Dakota Administrative Code section 69-02-04-05 states:

In any proceeding in which the commission is authorized to act after opportunity for hearing, opportunity is afforded by service of notice fixing a reasonable period of time within which any person desiring to be heard may file a protest or request for a hearing. If a protest or request for hearing is not filed within the time provided, the commission may dispose of the matter on the basis of the pleadings, other submittals, and the studies and recommendations of the staff. A party not requesting oral hearing in the party's pleading is deemed to have waived a hearing for the purpose of the decision, but not for the purpose of applying for rehearing with respect to the decision. If a person requests a hearing but does not show good cause, the commission may determine the matter without a hearing.

9. Based on its investigation, Staff concluded that Maddox did not obtain a North Dakota One Call locate ticket.

10. Based on its investigation, Staff determined that Maddox did not notify Whiting of the excavation and, therefore, there could have been no agreement between Maddox and Whiting under North Dakota Century Code Section 49-23-04(1) prior to excavation

that would relieve Maddox of his obligation to provide excavation notice at least forty-eight hours before the excavation.

11. Staff concluded that the excavation was not being made in a time of emergency under North Dakota Century Code Section 49-23-04(4), allowing the excavator to give notification after the start of the excavation.

12. Maddox violated North Dakota Century Code Section 49-23-04 by failing to contact the notification center, North Dakota One Call, and provide an excavation or location notice at least forty-eight hours before beginning its excavation.

13. The Commission is authorized by North Dakota Century Code section 49-07-01.1 to impose a fine of up to \$5,000 for violations of the North Dakota One Call law.

14. Maddox acknowledges that he is not a contractor, does not have a business, was not charging for the excavation work performed, and for other reasons, has no ability to pay a fine.

15. Maddox acknowledges that at the time of signing the Consent to Entry of Order, he was aware of or had been advised of his rights to a hearing in this matter, to consult an attorney, to present argument to the Commission, and to appeal from any adverse determination after a hearing, and Respondent Maddox expressly waives those rights.

16. There are no covenants, promises, undertakings, or understanding other than as specifically set forth in this Order.

17. For purposes of resolving this matter, without further administrative proceedings, Maddox and the Commission have agreed to enter into the following order.

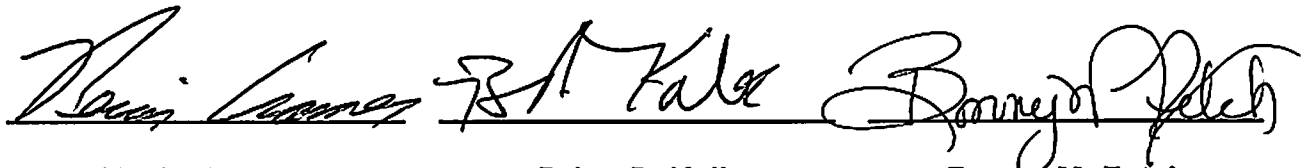
NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Vern Maddox agrees to be subject to a fine of \$500 that is suspended subject to the following conditions:

- a. Vern Maddox shall remit to the Commission \$500 if he is found in violation of North Dakota One Call law a second time.
- b. The \$500 fine will be remitted in addition to any other fines that may be imposed for a second violation.

DATED this 01 day of August, 2012.

PUBLIC SERVICE COMMISSION



**Kevin Cramer
Commissioner**

**Brian P. Kalk
Chairman**

**Bonny M. Fetch
Commissioner**

CONSENT TO ENTRY OF ORDER

The undersigned, Vern Maddox, states that he has read the foregoing Consent Order, that he knows and fully understands its content and effect, that he has been advised of the right to a hearing in this matter, the right to be represented by legal counsel, the right to present evidence and arguments to the Commission, and the right to appeal from an adverse determination after hearing; and that by signing this Consent to Entry of Order he waives those rights in their entirety and consents to entry of this Order by the North Dakota Public Service Commission. It is further expressly

understood that this Order constitutes the entire settlement agreement between the parties, there being no other promises or agreements, either express or implied.

DATED this 7 day of July, 2012.

By: Vern Maddox

Vern Maddox