



Public Service Commission

State of North Dakota

COMMISSIONERS

Julie Fedorchak
Randy Christmann
Brian P. Kalk

Executive Secretary
Darrell Nitschke

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

June 2, 2016

Mr. Darrell Nitschke
Executive Secretary
ND Public Service Commission
600 E. Boulevard Avenue Dept. 408
Bismarck, ND 58505-0480

Re: Case No. PU-14-740
Public Service Commission
R.J. Corman Derailment Services, LLC
Damage Prevention Enforcement

Dear Mr. Nitschke:

Enclosed for filing in the above-entitled matter, please find the original copy of the following:

- Notice of Motion and Motion for Order of Default
- Motion for Order of Default and Memorandum of Law

Should you have any questions, please contact me.

Best Regards,



John Schuh
Advocacy Staff Counsel

Enclosures

14 **GS-14-740** Filed: 6/2/2016 Pages: 28
**Notice of Motion, Motion & supporting documents
for Default Order**

Public Service Commission Advocacy Staff
John Schuh, Advocacy Staff Counsel

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	Case No. PU-14-740
)	
Complainant,)	NOTICE OF MOTION
)	AND MOTION FOR
vs.)	ORDER OF DEFAULT
)	
R.J. Corman Derailment Services, LLC,)	
)	
Respondent)	

TO: **Respondent R.J. Corman Derailment Services, LLC** (RJ Corman), 101 R.J. Corman Drive, Nicolasville, KY 40356.

PLEASE TAKE NOTICE that the Public Service Commission, Advocacy Staff, Movant in the above proceeding, respectfully moves for an order declaring RJ Corman in default. The motion is attached to this notice and by reference made a part hereof.

YOUR ARE HEREWITH NOTIFIED that the Notice of Motion and Motion for Order of Default has been submitted pursuant to N.D.C.C. § 28-32-21(e) and N.D. Admin. Code art. 69-02. The Public Service Commission may deem the Formal Complaint admitted and may enter an order in default as the facts and law may warrant. If the Public Service Commission rules in favor of Advocacy Staff's motion, you have (7) days after service of the default notice, order and grounds to file a written motion with the Public Service Commission requesting that the default order be vacated and stating the grounds relied upon.

10-01.1-13. Service of Process for R.J. Corman was received by the North Dakota Secretary of State on April 11, 2016. *See Attached Letter and Admission of Service.*

In Section X of the Formal Complaint RJ Corman was informed that “[t]he respondent must serve an answer to this complaint upon the Complainant and the Commission within twenty days after service of the complaint, or the Commission may deem the complaint to be admitted.” Having received no answer to the Formal Complaint by 2 May 2016, the Commission may deem the Formal Complaint to be admitted and enter an Order of Default pursuant to N.D.C.C. § 28-32-21(e).

CONCLUSION

For these reasons, Advocacy Staff respectfully requests the Public Service Commission enter an Order of Default against RJ Corman, impose an appropriate civil penalty of \$500, and such other relief that the Commission finds just and proper.

Dated: June 2nd, 2016

Respectfully,



John M. Schuh (ND ID# 08138)
Advocacy Staff
jschuh@nd.gov
12th Floor, Dept. 408
600 E Boulevard Ave
Bismarck, ND 58505
(701) 328-2421

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	Case No. PU-14-740
)	
Complainant,)	
)	MOTION FOR
vs.)	ORDER OF DEFAULT
)	AND MEMORANDUM OF
R.J. Corman Derailment Services, LLC)	LAW
)	
Respondent)	

MOTION FOR ORDER OF DEFAULT

Public Service Commission Advocacy Staff (Advocacy Staff) respectfully seeks an order in default against Respondent, R.J. Corman Derailment Services, LLC (RJ Corman). In support of the motion, Advocacy Staff states the following:

MEMORANDUM

Pursuant to N.D.C.C. § 28-32-21(e) and N.D. Admin. Code § 69-02-02-03(1), a Formal Complaint “may inform the respondent that an answer to the complaint must be served upon the complainant and the agency with which the complaint is filed within twenty days after service of the complaint, or the agency may deem the complaint to be admitted.” On 3 March 2016, RJ Corman received the Formal Complaint filed with the Commission via certified mail. RJ Corman failed to respond to the Formal Complaint within the time allotted under N.D.C.C. § 28-32-21(e). Having failed to answer the complaint, the Commission may deem the Formal Complaint to be admitted by RJ Corman and “enter an order in default as the facts and law may warrant.” N.D.C.C. § 28-32-21(e).

BACKGROUND

On 10 October 2014, Jeremy Finnie of Enbridge Pipelines submitted a ND One-call complaint alleging RJ Corman failed to provide excavation or location notice at least 48 hours before beginning any excavation. On 13 October 2014, Commission Staff enclosed a copy of the ND One-Call Complaint to RJ Corman and requested a response and written account of the event, including the applicable One Call locate ticket number for work performed at the location listed in the ND One-Call Complaint. Although telephone contact was attained, no written response was provided to the Commission Staff.

On 3 February 2016, based on its investigation, Advocacy Staff filed a Formal Complaint alleging RJ Corman violated N.D.C.C. § 49-23-04(1) by failing to provide an excavation notice to the North Dakota One-Call Center at least forty-eight hours before beginning excavation. *See Attached Formal Complaint.* On 24 February 2016, the Commission found the Formal Complaint stated a *prima facie* case. Service of the Formal Complaint with Attached Exhibit 1 was initiated on 29 February 2016 via certified mail by Geralyn R. Schmaltz to R.J. Corman Derailment Services, LLC, 4780 Underpass Ave., Billings, MT 59101 (Cert. No. 7013 2270 0001 0313 9454); and R.J. Corman Railroad Group 101 R.J. Corman Drive, Nicholasville, KY 40356 (Cert. No. 7015 3010 0000 6559 9302). Service for Cert. No. 7013 2270 0001 0313 9454 was returned unsigned. A return receipt for Cert. No. 7015 3010 0000 6559 9302 was signed by John Howard, marked as agent, on 3 March 2016. *See Attached Return Ticket.* Unable to obtain a response from R.J. Corman, the Commission served the North Dakota Secretary of State as the agent for service of process for a foreign entity transacting business without a certificate of authority or an entity no longer with a registered agent pursuant to North Dakota Century Code §

Bismarck, North Dakota, this 2nd day of June, 2016.



John M. Schuh (ND ID # 08138)
Advocacy Staff Counsel
600 E Boulevard Ave – Dept 408
Bismarck, ND 58505
(701) 328-2400

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
R.J. Corman Derailment Services, LLC
Damage Prevention Enforcement

Case No. GS-14-740

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Geralyn R. Schmaltz deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **11th day of March, 2016**, she deposited in the United States Mail, at Bismarck, North Dakota, **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and containing photocopy of:

- Affidavit of Service by Certified Mail Dated March 11, 2016
- Cover Letter For Refiled Formal Complaint
- Refiled Formal Complaint With Attached Exhibit 1
- Formal Complaint
- Motion Finding Complaint States a *Prima Facie* Case
- Affidavit of Service by Certified Mail Dated February 29, 2016

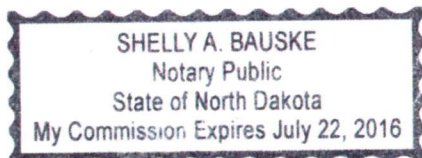
The envelope was addressed as follows:

Peter Crilly
R.J. Corman Derailment Services LLC
PO Box 2298
Williston, ND 58802
Cert. No. 7015 3010 0000 6559 9487

The addresses shown are the respective addressee's last reasonably ascertainable mailing address.

Subscribed and sworn to before me
this **11th day of March, 2016**.

SEAL



Geralyn R. Schmaltz

Shelly A. Bauske
Notary Public

February 24, 2016

Mr. Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-4080

RE: Public Service Commission
R.J.Corman Derailment Services, LLC
Damage Prevention Enforcement
GS-14-740

Dear Mr. Nitschke:

On February 3, 2013, Advocacy Staff (Staff) filed a Formal Complaint in Public Service Commission Case No. GS-14-740. Staff inadvertently failed to attach the October 13, 2014 letter referenced in Section V of the Formal Complaint.

Enclosed for filing, please find a copy of the Formal Complaint filed February 3, 2016 along with the October 13, 2014 letter referenced.

Sincerely,

A handwritten signature in black ink, appearing to read "John Schuh", written over a horizontal line.

John M. Schuh
Advocacy Counsel

Enclosures

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA



Public Service Commission
R.J. Corman Derailment Services, LLC
Damage Prevention Enforcement

Case No. GS-14-740

Public Service Commission,)
Complainant,)
vs.)
R.J. Corman Derailment Services, LLC,)
Respondent.)

Complaint

The Public Service Commission of North Dakota, by and through Advocacy Staff (Staff), for its complaint against R.J. Corman Derailment Services, LLC (RJ Corman), alleges and shows the following:

I

RJ Corman is a Kentucky Limited Liability Company that is not registered with the North Dakota Secretary of State. Its registered agent with the Kentucky Secretary of State is Kenneth D. Adams, One Jay Station, Nicholasville, KY 40356.

II

Enbridge is a foreign corporation authorized to do business in North Dakota.

III

North Dakota Century Code section 49-23-04(1) provides:

Except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice at least forty-eight hours before beginning any excavation, excluding Saturdays, Sundays, 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.

North Dakota Century Code section 28-32-22 provides:

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.

North Dakota Century Code section 49-07-01.1 provides:

Any person who violates any statute, commission order, or commission rule which applies to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, 24-09, 32-25, and 51-05.1, titles 60 and 64, and title 49 except for chapters 49-22 and 49-23, shall, in addition to any other penalty provided, be subject to a civil penalty of not to exceed five thousand dollars. A violation occurring under chapter 49-23, in addition to any other penalty, is subject to a civil penalty not to exceed twenty-five thousand dollars. The commission shall develop policies for the assessment of penalties under chapter 49-23 which will take into consideration the severity of damages and the conduct of the offender. The civil penalty may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.

North Dakota Administrative Code section 69-02-04-05 provides:

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.

IV

On October 10, 2014, the Commission received a ND One-Call Complaint from Jeremy Finnie at Enbridge. The complaint alleges a violation by RJ Corman of North Dakota Century Code section 49-23-04(1) of the One-Call Excavation Notice System.

V

By its October 13, 2014 letter, attached as Exhibit 1, Commission staff informed RJ Corman of Enbridge's complaint filing, and requested a response by October 27, 2014. As of February 2, 2016, the Commission has not received a response from RJ Corman.

VI

As alleged by Enbridge's complaint, on May 25, 2014, RJ Corman began an excavation as defined in North Dakota Century Code section 49-23-01(7) while attempting to free a track hoe that was stuck in the mud near an Enbridge underground facility at York, North Dakota. No damage was caused by this excavation.

VII

Based on its investigation Staff determined that RJ Corman personnel did not provide an excavation notice to the North Dakota One Call Notification Center (NDOC) at any time before or after the work began.

Based on its investigation, Staff concluded that there was no agreement between RJ Corman and Enbridge under North Dakota Century Code section 49-23-04(1) prior

to excavation that would relieve RJ Corman of its obligation to provide excavation notice at least forty-eight hours before the excavation.

Based on its investigation, 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.

VIII

RJ Corman violated North Dakota Century Code section 49-23-04(1) by failing to provide an excavation notice to the NDOC Notification Center at least forty-eight hours before beginning its excavation.

IX

The North Dakota Public Service Commission Damage Prevention Plan provides:

D PROPOSED CIVIL PENALTIES:

1. The following criteria must be used by Commission staff to determine if a civil penalty should be proposed when filing a formal complaint:
 - a. The nature, circumstances and severity of the complaint;
 - b. The degree of suspected fault on the part of the respondent;
 - c. The respondent's history of prior violations or complaints;
 - d. The respondent's ability to pay;
 - e. Any good faith effort by the respondent in attempting to achieve compliance; and
 - f. The effect the penalty may have on the respondent's ability to continue in business.

X

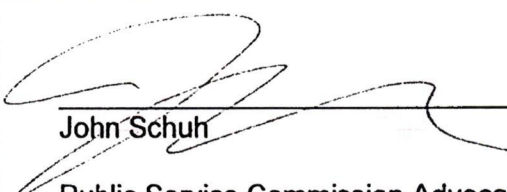
The Respondent must serve an answer to this complaint upon the Complainant and the Commission within twenty days after service of the complaint, or the Commission may deem the complaint to be admitted. Answers must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure.

Prayer for Relief

Based on the foregoing, Staff seeks the following relief:

1. That the Commission find RJ Corman in violation of North Dakota Century Code ch.49-23 for failing to comply with the One Call requirements enumerated in North Dakota Century Code section 49-23-04(1).
2. That the Commission impose an appropriate civil penalty up to \$25,000, but at least \$500.
3. Such other relief that the Commission finds just and proper.

Dated this 3rd day of February, 2016



John Schuh

Public Service Commission Advocacy Counsel
State Capitol – 12th Floor
600 E Boulevard Ave – Dept. 408
Bismarck, North Dakota 58505-0480
701-328-2412

Victor Schock
Public Utility Analyst
Public Service Commission Advocacy Staff
State Capitol – 12th Floor
600 E Boulevard Ave – Dept 408
Bismarck, North Dakota 58505-0480
701-328-3397



Public Service Commission
State of North Dakota

COMMISSIONERS

Brian P. Kalk
Randy Christmann
Julie Fedorchak

Executive Secretary
Darrell Nitschke

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

October 13, 2014

Curtis Keazer
R.J. Corman Derailment Services, LLC
4780 Underpass Ave
Billings, MT 59101

Re: One-Call Excavation Notice System: North Dakota Century Code Chapter 49-23

Dear Mr. Keazer:

Enclosed is a copy of a ND One-Call Complaint, against R.J.Corman Derailment Services, LLC, received by the North Dakota Public Service Commission on October 10, 2014, from Jeremy Finnie at Enbridge Pipelines, LLC, of Grand Forks, ND, Case Number GS-14-740. The location of the incident identified in the complaint is approximately near BNSF railroad right of way near York, ND.

I am sending you this information so that you are aware of the Complaint and have an opportunity to present any information you may have to assist us in processing this case. **Please respond to Darrell Nitschke, Executive Secretary, North Dakota Public Service Commission, by October 27, 2014**, with your written account of the event, including the applicable One Call locate ticket number for work performed at the address indicated.

I will review your response, the ND One-Call Complaint, and other available information to determine the next step in this matter. If I conclude there was a violation of the One Call law, I may file a formal complaint with the Commission. If I decide to proceed with a formal complaint, I will attempt to contact you in advance.

Please contact me at 701-328-3397 or at vschock@nd.gov with any questions regarding this correspondence.

Sincerely,

Victor Schock
Compliance and Competitive Markets Division

Enc: ND One-Call Complaint
c: Jeremy Finnie



ND ONE-CALL COMPLAINT

Public Service Commission
SFN 58-67-1-14

To file a complaint, please use the One-Call System, North Dakota Century Code Chapter 49-23.

PART A - WHO IS SUBMITTING THIS COMPLAINT (COMPLAINANT)

Company Person Energy Operator NNDP, LLC, Jeremy Kenna	Street Address 2775 1st Avenue S.W.	City Fargo, ND	State and Zip Code ND 58103
Telephone and Cell Phone Number 701-746-9772 / 701-736-1601	Email Address jenna.kenna@nddp.com		Date 02/11/2014
<input checked="" type="checkbox"/> Complainant is willing and able to testify on the complaint if matter goes to formal hearing			

PART B - WHO VIOLATED THE ONE-CALL REGULATIONS (RESPONDENT)

Company Person R.J. Common Services, Inc., Tim Keaton	Street Address 4700 1st Avenue S.W.	City Fargo, ND	State and Zip Code ND 58103
Telephone and Cell Phone Number 701-736-6448 / 701-736-2137	Email Address tim.keaton@rjcs.com		

PART C - ALLEGED VIOLATION

<input type="checkbox"/> Operator failed to provide or update the information provided to the notification center on a timely basis <input checked="" type="checkbox"/> Excavator failed to provide excavation or location notice at least 48 hours before beginning any excavation <input type="checkbox"/> Excavator failed to provide required information in excavation or location notice <input type="checkbox"/> Notification center failed to transmit the notice to every operator that has an underground facility in the area of the excavation <input type="checkbox"/> Notification center failed to inform the excavator of the names of operators or underground facilities in the area <input type="checkbox"/> Operator failed to locate and mark underground facility within 48 hours <input type="checkbox"/> Excavation started prior to underground facility locate <input type="checkbox"/> Operator failed to mark underground facility within 24 inches horizontal <input type="checkbox"/> Excavator failed to renew excavation or location request prior to the expiration of the twenty-one-day period <input checked="" type="checkbox"/> Excavator failed to conduct the excavation in a careful and prudent manner to avoid damage of underground facilities <input type="checkbox"/> Excavator failed to maintain the markings during excavation <input type="checkbox"/> Other (Identify the specific section of NDCC Chapter 49-23: _____)
Location of Violator None ND
Date and Time of Violation 05/29/14, Approximately 8:00 AM
Description (Summarize the observations on which you rely to allege the violation. If more space is required, please provide the description on a separate page. The above party was working for a utility company to dig a trench for a water line. The trench was approximately 48 inches deep and 12 inches wide. The trench was located in an area where there are many underground utilities. The excavator failed to provide the required information in the excavation or location notice. The excavator failed to locate and mark the underground facility within 48 hours. The excavator failed to conduct the excavation in a careful and prudent manner to avoid damage of underground facilities. The excavator failed to maintain the markings during excavation.

PART D - DAMAGE

Fatalities None	Injured None	Inpatient Hospitalization None
Underground facility type(s) and Operator(s) affected High Pressure Gas (D) Power Repetitive Water Pipe Operator: North Dakota Power Co.		
Estimated Value of Damage (damage as defined under NDCC Chapter 49-23) \$	Number of Customers Affected	
Other impact of event		
Please attach photos of Event Area or Damaged Facility		

PART I - SIGNATURE

Signature of Person Filing Complaint Jeremy Kenna	Date 02/11/14
--	------------------

Send Completed, Original Complaint To:
Public Service Commission
600 E Boulevard Ave Dept 409
Bismarck ND 58505-0498
Telephone: (701) 328-2400



BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

Case No. GS-14-740

Public Service Commission
R.J. Corman Derailment Services, LLC
Damage Prevention Enforcement

Public Service Commission,)
Complainant,)
vs.)
R.J. Corman Derailment Services, LLC,)
Respondent.)

Complaint

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II

Enbridge is a foreign corporation authorized to do business in North Dakota.

III

North Dakota Century Code section 49-23-04(1) provides:

Except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice at least forty-eight hours before beginning any excavation, excluding Saturdays, Sundays, 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.

North Dakota Century Code section 28-32-22 provides:

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.

North Dakota Century Code section 49-07-01.1 provides:

Any person who violates any statute, commission order, or commission rule which applies to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, 24-09, 32-25, and 51-05.1, titles 60 and 64, and title 49 except for chapters 49-22 and 49-23, shall, in addition to any other penalty provided, be subject to a civil penalty of not to exceed five thousand dollars. A violation occurring under chapter 49-23, in addition to any other penalty, is subject to a civil penalty not to exceed twenty-five thousand dollars. The commission shall develop policies for the assessment of penalties under chapter 49-23 which will take into consideration the severity of damages and the conduct of the offender. The civil penalty may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.

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show good cause, the commission may determine the matter without a hearing.

IV

On October 10, 2014, the Commission received a ND One-Call Complaint from Jeremy Finnie at Enbridge. The complaint alleges a violation by RJ Corman of North Dakota Century Code section 49-23-04(1) of the One-Call Excavation Notice System.

V

By its October 13, 2014 letter, attached as Exhibit 1, Commission staff informed RJ Corman of Enbridge's complaint filing, and requested a response by October 27, 2014. As of February 2, 2016, the Commission has not received a response from RJ Corman.

VI

As alleged by Enbridge's complaint, on May 25, 2014, RJ Corman began an excavation as defined in North Dakota Century Code section 49-23-01(7) while attempting to free a track hoe that was stuck in the mud near an Enbridge underground facility at York, North Dakota. No damage was caused by this excavation.

VII

Based on its investigation Staff determined that RJ Corman personnel did not provide an excavation notice to the North Dakota One Call Notification Center (NDOC) at any time before or after the work began.

Based on its investigation, Staff concluded that there was no agreement between RJ Corman and Enbridge under North Dakota Century Code section 49-23-04(1) prior

to excavation that would relieve RJ Corman of its obligation to provide excavation notice at least forty-eight hours before the excavation.

Based on its investigation, 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.

VIII

RJ Corman violated North Dakota Century Code section 49-23-04(1) by failing to provide an excavation notice to the NDOC Notification Center at least forty-eight hours before beginning its excavation.

IX

The North Dakota Public Service Commission Damage Prevention Plan provides:

D PROPOSED CIVIL PENALTIES:

1. The following criteria must be used by Commission staff to determine if a civil penalty should be proposed when filing a formal complaint:
 - a. The nature, circumstances and severity of the complaint;
 - b. The degree of suspected fault on the part of the respondent;
 - c. The respondent's history of prior violations or complaints;
 - d. The respondent's ability to pay;
 - e. Any good faith effort by the respondent in attempting to achieve compliance; and
 - f. The effect the penalty may have on the respondent's ability to continue in business.

X

The Respondent must serve an answer to this complaint upon the Complainant and the Commission within twenty days after service of the complaint, or the Commission may deem the complaint to be admitted. Answers must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure.

Prayer for Relief

Based on the foregoing, Staff seeks the following relief:

1. That the Commission find RJ Corman in violation of North Dakota Century Code ch.49-23 for failing to comply with the One Call requirements enumerated in North Dakota Century Code section 49-23-04(1).
2. That the Commission impose an appropriate civil penalty up to \$25,000, but at least \$500.
3. Such other relief that the Commission finds just and proper.

Dated this 3rd day of February, 2016



John Schuh

Public Service Commission Advocacy Counsel
State Capitol – 12th Floor
600 E Boulevard Ave – Dept. 408
Bismarck, North Dakota 58505-0480
701-328-2412

Victor Schock
Public Utility Analyst
Public Service Commission Advocacy Staff
State Capitol – 12th Floor
600 E Boulevard Ave – Dept 408
Bismarck, North Dakota 58505-0480
701-328-3397

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
R.J. Corman Derailment Services, LLC
Damage Prevention Enforcement

Case No. GS-14-740

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Geralyn R. Schmaltz deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **29th day of February, 2016**, she deposited in the United States Mail, at Bismarck, North Dakota, **two** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and containing photocopy of:

- **Cover Letter For Refiled Formal Complaint**
- **Refiled Formal Complaint With Attached Exhibit 1**
- **Formal Complaint**
- **Motion Finding Complaint States a *Prima Facie* Case**
- **Affidavit of Service by Certified Mail**

The envelopes were addressed as follows:

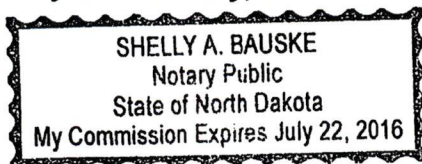
Curtis Keazer
R.J. Corman Derailment Services, LLC
4780 Underpass Ave.
Billings, MT 59101
Cert. No. 7013 2250 0001 0313 9454

R.J. Corman Railroad Group
101 R. J. Corman Drive
Nicholasville, KY 40356
Cert. No. 7015 3010 0000 6559 9302

The addresses shown are the respective addressee's last reasonably ascertainable mailing address.

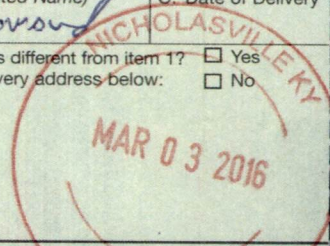
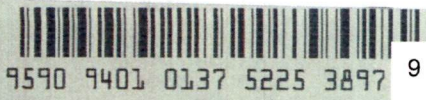
Subscribed and sworn to before me
this **29th day of February, 2016**.

SEAL

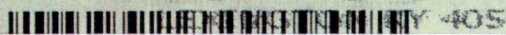


Shelly A. Bauske
Notary Public

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>John Howard</i></p> <p>C. Date of Delivery</p>
<p>1. Article Addressed to:</p> <div style="border: 1px solid black; padding: 5px; margin: 5px;"> <p>R.J. Corman Railroad Group 101 R. J. Corman Drive Nicholasville, KY 40356 Cert. No. 7015 3010 0000 6559 9302 GS-14-740</p> </div>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <div style="text-align: center; border: 2px solid red; border-radius: 50%; padding: 10px; color: red; font-weight: bold;"> NICHOLASVILLE KY MAR 03 2016 </div>
<p>2. Article Number (Transfer from service label)</p> <div style="border: 1px solid black; padding: 5px; margin: 5px;"> <p>7015 3010 0000 6559 9302</p> </div>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Registered Mail™</p>
<p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>	<p>9 GS-14-740 Filed 03/07/2016 Pages: 2 Return receipt - 7015-3010-0000-6559-9302</p> <p><i>GS-14-740</i></p> <p>Domestic Return Receipt</p>



USPS TRACKING#



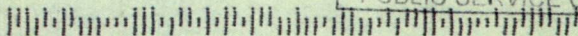
9 GS-14-740 Filed: 3/7/2016 Pages: 2
Return receipt - 7015-3010-0000-6559-9302

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

USPS

and ZIP+4® in this box*

ND Public Service Commission
600 E. Boulevard Ave. Dept. 408
Bismarck, ND 58505-0480



ALVIN A. JAEGER
SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 E BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

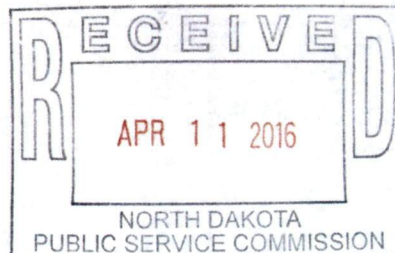


EMAIL sos@nd.gov
WEBSITE www.nd.gov/sos

GENERAL INFORMATION (701) 328-2900
TOLL FREE 1-800-352-0867

SECRETARY OF STATE

April 11, 2016



JOHN SCHUH
PUBLIC SERVICE COMMISSION ADVOCACY COUNSEL
STATE CAPITOL 12TH FL
600 E BOULEVARD AVE DEPT 408
BISMARCK ND 5805-0480

Re: R.J. CORMAN RAILROAD GROUP

Dear Mr. Schuh,

Service of Process has been accepted on the above referenced pursuant to the provisions of North Dakota Century Code Section 10-01.1-13.

Enclosed is an Admission of Service along with the following:

- a) Cover Letter for Refiled Formal Complaint
- b) Refiled Formal Complaint with Attached Exhibit 1
- c) Formal Complaint
- d) Motion Finding Complaint States a Prima Facie Case
- e) Affidavit of Service by Certified Mail

If this office can further assist you, please feel free to contact us.

Sincerely,

A handwritten signature in cursive script that reads "Darcy Hurley".

Darcy Hurley
Business Information Unit Lead

DH/rmw
Enc.

13 GS-14-740 Filed 04/11/2016 Pages: 18
Admission of Service and related documents
North Dakota Secretary of State
Darcy Hurley, Business Information Unit

State of North Dakota

SECRETARY OF STATE



ADMISSION OF SERVICE

Date: April 11, 2016

Service of the within Admission Of Service, Cover Letter for Refiled Formal Complaint, Refiled Formal Complaint with Attached Exhibit 1, Formal Complaint, Motion Finding Complaint States a Prima Facie Case and Affidavit of Service by Certified Mail for and on behalf of

R.M. CORMAN RAILROAD GROUP

is hereby admitted by separate copy received for the above mentioned defendant, this 11th day of April at my office in the Main Capitol Building, 600 E Boulevard Ave, Bismarck, North Dakota.

Admission of Service is completed at request of:

John Schuh
Public Service Commission Advocacy Counsel
State Capitol-12th Floor
600 E Boulevard Ave Dept 408
Bismarck ND 58505-0480

A handwritten signature in cursive script, appearing to read "Alvin A. Jaeger".

Secretary of State
Alvin A. Jaeger

ALVIN A. JAEGER
SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 E BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500



EMAIL sos@nd.gov
WEBSITE www.nd.gov/sos
GENERAL INFORMATION (701) 328-2900
TOLL FREE 1-800-352-0867

SECRETARY OF STATE

April 11, 2016

R.J. CORMAN RAILROAD GROUP
PO BOX 788
NICHOLASVILLE KY 40340

Re: R.J. CORMAN RAILROAD GROUP

Dear Sir,

Enclosed is the Admission of Service, Cover Letter for Refiled Formal Complaint, Refiled Formal Complaint with Attached Exhibit 1, Formal Complaint, Motion Finding Complaint States a Prima Facie Case and Affidavit of Service by Certified Mail.

This service has been accepted by this office and is being forwarded to you pursuant to the provisions of North Dakota Century Code, Section 10-01.1-13.

If this office can further assist you, please feel free to contact us.

Sincerely,

A handwritten signature in cursive script that reads "Darcy Hurley".

Darcy Hurley
Business Information Unit Lead

DH/rmw
Enc.

Certified Mail No. 7015 3010 0000 6577 0763

cc: John Schuh
Public Service Commission Advocacy Counsel
State Capitol-12th Fl
600 E Boulevard Ave Dept 408
Bismarck ND 58505-0480

RECEIVED
APR 11 2016
SEC. OF STATE

February 24, 2016

Mr. Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-4080

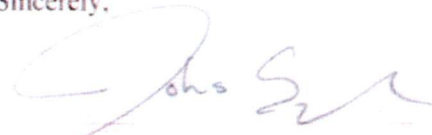
RE: Public Service Commission
R.J.Corman Derailment Services, LLC
Damage Prevention Enforcement
GS-14-740

Dear Mr. Nitschke:

On February 3, 2013, Advocacy Staff (Staff) filed a Formal Complaint in Public Service Commission Case No. GS-14-740. Staff inadvertently failed to attach the October 13, 2014 letter referenced in Section V of the Formal Complaint.

Enclosed for filing, please find a copy of the Formal Complaint filed February 3, 2016 along with the October 13, 2014 letter referenced.

Sincerely,



John M. Schuh
Advocacy Counsel

Enclosures