

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Green Way Earthworks LLC
Damage Prevention Enforcement**

Case No. PU-15-217

AFFIDAVIT OF SERVICE BY CERTIFIED AND REGULAR 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 **22nd day of April, 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:

- **Consent Order**

The envelope was addressed as follows:

Andrew Hubbell
Green Way Earthworks
351 Hwy 22
Killdeer, ND 58640
Cert. No. 7015 3010 0000 6559 9753

Geralyn R. Schmaltz further deposes and says that on the **22nd day of April, 2016**, she deposited in the United States Mail, Bismarck, North Dakota, **two** envelopes by regular mail, with postage fully prepaid, securely sealed, containing a photocopy of the same.

The envelopes were addressed as follows:

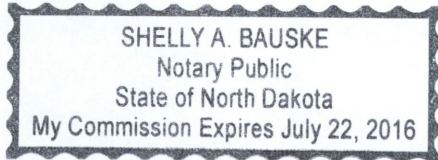
Bakken Commercial Services, LLC
Registered Agent for
Green Way Earthworks LLC
PO Box 9199
Fargo, ND 58106-9199

Charles Columbus
Hess Corporation
10384 68th Street NW
Tioga, ND 58852

Each address shown is the respective addressee's last reasonably ascertainable mailing address.

Subscribed and sworn to before me
this **22nd day of April, 2016**.

SEAL



Gregory R. Schmeitz

Shelly A. Bauske
Notary Public

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
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CONSENT ORDER

April 20, 2016

Preliminary Statement

On May 21, 2015, the Commission received a ND One-Call Complaint from Hess Corporation (Hess). The complaint alleged a violation by Green Way Earthworks LLC (Green Way) of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

On May 21, 2015 Public Service Commission staff sent a copy of the ND One Call Complaint to Green Way for response.

On June 10, 2015 Green Way provided a response.

Based on its investigation, Commission Advocacy Staff (Staff) filed a Formal Complaint with the Public Service Commission on March 2, 2016.

On March 9, 2016 the North Dakota Public Service Commission found the Formal Complaint showed a prima facie case.

Service was received by Marcella Goodrich on March 14, 2016 via certified mail.

On March 22, 2016, an Answer was filed by Green Way.

Green Way and the Commission have agreed to resolve this proceeding without further administrative proceedings or litigation and that entry of this Consent Order is the most appropriate means of resolving the alleged violation.

Discussion

Green Way is a foreign limited liability company with principal offices at 351 Highway 22, Killdeer, ND 58640-9375.

Staff conducted an investigation of the alleged violation, including review of the filings and communication with Green Way, Hess, and North Dakota One Call (NDOC).

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.

Investigation Summary

Based on its investigation, Staff concluded that on May 20, 2015, Green Way personnel provided an excavation notice to the NDOC Notification Center for work to begin on May 20, 2015 at the intersection of State Highway 23 and Highway 73 in McKenzie County, North Dakota. The NDOC Notification Center assigned locate ticket number 15064371 to the excavation notice. Under North Dakota Century Code section 49-23-04(3)(g), the expiration date for the locate ticket was June 10, 2015.

Based on its investigation, Staff concluded that on May 20, 2015, Green Way personnel began an excavation as defined under North Dakota Century Code section 49-23-01(7) while performing installation of culverts at the intersection of State Highway 23 and Highway 73 in McKenzie County, North Dakota. The excavation in the area described by locate ticket number 15064371, began before the One-Call ticket was called in. Green Way did not provide an excavation notice at least 48 hours before beginning any excavation.

Based on its investigation, Staff concluded that there was no agreement between Green Way and Hess under North Dakota Century Code section 49-23-04(1) prior to excavation that would relieve Green Way 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.

Based on its investigation, Staff concluded that Green Way 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.

Concurrences

Green Way and the Commission have agreed to resolve this matter without further administrative proceedings.

In the attached Consent to Entry of Order, Green Way expressly waives any further procedural requirements with respect to issuance of the Consent Order. Green Way waives its rights to contest this matter or the validity of this Consent Order, including all rights to administrative or judicial hearings or appeals.

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

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.

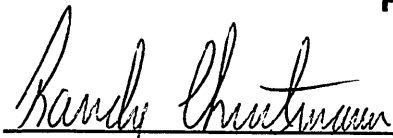
The Commission issues the following:

Order


The Commission orders:

1. Green Way violated North Dakota Century Code Section 49-23-04(1) by failing to contact the NDOC notification center forty-eight hours before beginning an excavation.
2. Green Way to pay a fine of \$500, payable to the North Dakota Public Service Commission within ten business days of service of this Order.

PUBLIC SERVICE COMMISSION



Randy Christmann
Commissioner



Julie Fedorchak
Chairman



Brian P. Kalk
Commissioner

CONSENT TO ENTRY OF ORDER

The undersigned, on behalf of Green Way Earthworks LLC (Green Way) is authorized to act on behalf of Green Way and bind Green Way for purposes of this Consent Order; has read the Consent Order, knows and fully understands its content and effect; 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, the

right to cross examine witnesses, and the right to appeal from an adverse determination after hearing; and that, by signing this Consent to Entry of Order, waives all those rights in their entirety on behalf of Green Way, and consents to entry of this Order by the North Dakota Public Service Commission to resolve the violation without further administrative proceedings. 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 28 day of March 2016

Green Way Earthworks LLC

By 

Its President
{TITLE}