



Public Service Commission

State of North Dakota

COMMISSIONERS

Randy Christmann
Julie Fedorchak
Brian Kroshus

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

May 17, 2017

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

Re: Case No. PU-15-571
Public Service Commission
Carstensen Contracting, Inc.
Damage Prevention Enforcement

Dear Mr. Nitschke:

Enclosed is a copy of the Consent Agreement to be filed in the above captioned proceedings.

Best Regards,

A handwritten signature in blue ink, appearing to read "John Schuh", with a long horizontal flourish extending to the right.

John Schuh
Legal Counsel

Enclosure

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	Case No. PU-15-571
)	
vs.)	CONSENT AGREEMENT
)	
Carstensen Contracting, Inc.,)	
)	
Respondent)	

Preliminary Statement

On July 17, 2015, the Commission received a ND One-Call Complaint from ONEOK Rockies Midstream, LLC. The complaint alleged a violation by Carstensen Contracting, Inc. (Carstensen) of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

North Dakota Century Code section 49-23-04(1) states, that,

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.

As a result of its investigation, Public Service Commission Advocacy Staff (Advocacy Staff) believed that Carstensen violated North Dakota Century Code section 49-23-04(1) and the Commission initiated an administrative action against Carstensen.

Carstensen and Advocacy Staff engaged in good faith settlement discussions resulting in this Consent Agreement. Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and that entry of this Consent Agreement is the most appropriate means of resolving this administrative action, Advocacy Staff and Carstensen make the following agreement:

1. On May 13, 2016, Advocacy Staff filed a formal complaint with the Commission.
2. The Public Service Commission's administrative action against Carstensen sought to impose a penalty of up \$25,000, but at least \$22,600 for the violation alleged in Advocacy Staff's complaint.
3. On June 7, 2016, Carstensen filed a response to the formal complaint denying the allegations contained therein.
4. This Agreement is intended to resolve all of the violations alleged in the complaint. Advocacy Staff and Carstensen agree to settle this matter on the following terms:
 - a. Carstensen agrees to be assessed a civil penalty of \$15,000. Carstensen agrees to remit \$10,000 of the \$15,000, payable to the North Dakota Public Service Commission, within ten business days of service of an Order approving the Consent Agreement. The remaining \$5,000 civil penalty is suspended on the condition that Carstensen commits no further violations of the North Dakota One Call Law (North Dakota Century Code Chapter 49-23) within five years of the date of the Order approving the Consent Agreement.

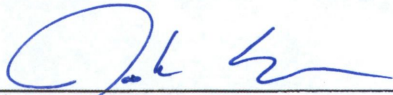
- b. In the event that the Commission finds Carstensen violated the North Dakota One Call Law within five years of the date of the Order, Carstensen shall remit the suspended portion of the penalty in the amount of \$5,000 within the time ordered by the Commission, in addition to any additional fines or penalties imposed for the subsequent violation.
- c. If within five years of the date of the Order there is no subsequent violation of the North Dakota One Call Law by Carstensen, the suspended portion of the penalty in the amount of \$5,000 is withdrawn.
- d. If approved by the Commission, Carstensen expressly waives any further procedural requirements with respect to the issuance of the Consent Agreement and Order, and Carstensen waives its right to contest this matter or the validity of this Consent Agreement and Order, including all rights to administrative or judicial hearings or appeals.
- e. For purposes of this Agreement, Carstensen neither admits nor denies the violations alleged in the complaint. Carstensen retains the right to dispute the alleged violations in any subsequent proceedings, other than proceedings to implement or enforce this Consent Agreement or Order. Neither the fact that Carstensen has consented to the Agreement, nor the statements in it, shall be used for any purpose in any proceeding except the enforcement by Carstensen and the Commission of this Agreement or Order. As to others who are not parties to this proceeding, nothing contained in this Agreement is an admission by Carstensen, and this

Consent Agreement is not an admission by Carstensen of liability and is not a waiver of any right, cause of action, or defense otherwise available to Carstensen other than specifically waived.

- f. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Agreement and Order.
5. This agreement may be executed in counterparts and duplicate copies, each which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.
6. The undersigned on behalf of Carstensen is authorized to act on behalf of Carstensen and bind Carstensen for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 17th day of May, 2017

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By:  _____

John M. Schuh
Advocacy Counsel
12th Floor, Dept. 408
600 Boulevard Ave.
Bismarck, ND 58505-0480

Dated this 16 day of May, 2017

Carstensen Contracting, Inc.

By: BRAD CARSTENSEN - VP
{insert name and title}