



**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](http://www.psc.nd.gov)  
E-mail: [ndpsc@nd.gov](mailto:ndpsc@nd.gov)  
Phone: 701-328-2400  
ND Toll Free: 1-877-245-6685  
Fax: 701-328-2410  
TDD: 800-366-6888 or 711

November 28, 2017

*VIA Hand Delivery*

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

Re: Case No. PU-17-338  
Public Service Commission  
KPH, Inc.  
Damage Prevention Enforcement

Case No. PU-17-355  
Public Service Commission  
KPH, 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,

John Schuh  
Legal Counsel

Enclosure

5 **PU-17-355** Filed: 11/28/2017 Pages: 5  
**Consent Agreement**

5 **PU-17-338** Filed: 11/28/2017 Pages: 5  
**Consent Agreement**

Public Service Commission  
John Schuh, Advocacy Counsel

**BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA**

---

<b>PUBLIC SERVICE COMMISSION,</b>	)	
	)	
<b>Complainant,</b>	)	<b>Case No. PU-17-338</b>
	)	<b>PU-17-355</b>
<b>vs.</b>	)	
	)	<b>CONSENT AGREEMENT</b>
<b>KPH, Inc.,</b>	)	
	)	
<b>Respondent .</b>	)	

---

**Preliminary Statement**

This Consent Agreement is entered into by and between KPH, Inc. (KPH) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket No. PU-17-338 and PU-17-355.

On August 31, 2017, the Commission received a ND One-Call Complaint from Summit Utility Services, LLC (Summit) under Case No. PU-17-338. The complaint alleged a violation by KPH of North Dakota Century Code section 49-23-05(3) for failure to use reasonable efforts to maintain markings during excavation.

On September 19, 2017, the Commission received a ND One-Call Complaint from Summit under Case No. PU-17-355. The complaint alleged a violation by KPH of North Dakota Century Code section 49-23-04(1) for failure to contact the notification center and provide an excavation or location notice before beginning an excavation.

North Dakota Century Code section 49-23-05(3) provides that "a ticket holder shall: Assume ownership of materials used to mark the facility, use reasonable efforts to maintain markings during excavation, and remove all tangible marking materials used to

mark the underground facility and site area upon completion of the excavation.”

North Dakota Century Code section 49-23-04(1) provides that “Except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice before beginning any excavation. An excavation begins the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice.

Having investigated the alleged violations, Staff has concluded that KPH violated North Dakota Century Code section 49-23-05(3) in Case No. PU-17-338 and North Dakota Century Code section 49-23-04(1) in Case No. PU-17-355.

KPH and 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, Staff and KPH agree to the following, subject to the approval and acceptance of the Commission:

1. KPH violated North Dakota Century Code section 49-23-05(3) in Case No. PU-17-338 by failing to use reasonable efforts to maintain markings during its excavation.
2. KPH violated North Dakota Century Code section 49-23-04(1) in Case No. PU-17-355 by failing to contact the notification center and provide an excavation or location notice before beginning an excavation.
3. KPH agrees to be assessed a civil penalty of \$500 in Case No. PU-17-338 and \$500 in Case No. PU-17-355 for a total of \$1,000, payable to the North Dakota Public Service Commission within ten business days of service of an Order

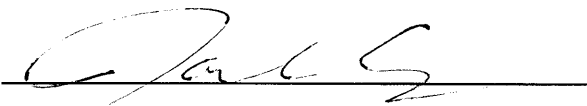
Adopting Consent Agreement (Order).

4. KPH consents to the filing of the Consent Agreement and an Order and hereby waives any further procedural requirements with respect to its issuance. Subject to the Order, KPH understands and agrees to waive all rights to contest the violations, the right to be represented by counsel, the right to present evidence and arguments to the Commission, the right to cross examine witnesses, or contest the validity of this Consent Agreement and Order Adopting this Consent Agreement, including all rights to administrative or judicial hearings or appeals.
5. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Agreement and Order.
6. 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.
7. The undersigned is authorized to act on behalf of KPH and bind KPH for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 27<sup>n</sup> day of November, 2017

PUBLIC SERVICE COMMISSION  
ADVOCACY STAFF – DAMAGE PREVENTION

By: \_\_\_\_\_

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

Dated this 22<sup>nd</sup> day of Nov., 2017

KPH, Inc.

By: [Signature] President  
{insert name and title}