

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
KPH, Inc.  
Damage Prevention Enforcement

Case No. PU-17-338

Public Service Commission  
KPH, Inc.  
Damage Prevention Enforcement

Case No. PU-17-355

**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 **21st day of December, 2017**, 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:

- **Order on Consent Agreement**

The envelope was addressed as follows:

KPH, Inc.  
9530 39<sup>th</sup> Street South  
Fargo, ND 58104  
**Cert. No. 7017 2400 0001 0890 4049**

**Geralyn R. Schmaltz** further deposes and says that on the **21st day of December, 2017** she deposited in the United States Mail, Bismarck, North Dakota **one** envelope by regular mail, with postage fully prepaid, securely sealed, containing a copy of the same.

The envelope was addressed as follows:

David Willgohs  
Summit Utility  
401 Oakland Avenue South  
Fargo, ND 58103

9    **PU-17-355**    Filed: 12/21/2017    Pages: 9  
**Affidavit of Service, Cert. and Reg. Mail - Order on  
Consent Agreement**

Public Service Commission

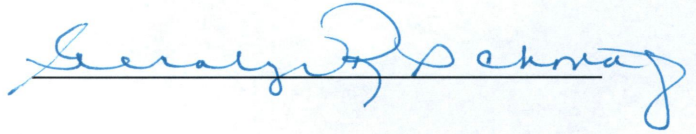
Case Nos. PU-17-338 and PU-17-355  
Affidavit of Service  
December 21, 2017  
Page 1 of 2

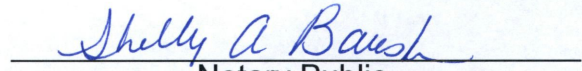
9    **PU-17-338**    Filed: 12/21/2017    Pages: 9  
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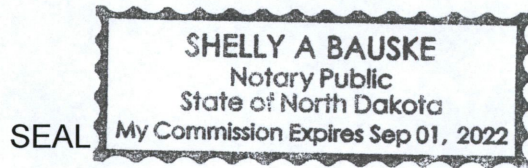
Public Service Commission

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

Subscribed and sworn to before me  
this **21st day of December, 2017**.

  
\_\_\_\_\_

  
\_\_\_\_\_  
Notary Public



**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission  
KPH, Inc.  
Damage Prevention Enforcement**

**Case No. PU-17-338**

**Public Service Commission  
KPH, Inc.  
Damage Prevention Enforcement**

**Case No. PU-17-355**

**ORDER ON CONSENT AGREEMENT**

**December 20, 2017**

**Preliminary Statement**

On August 31, 2017, the Commission received a ND One-Call Complaint from Summit Utility Services, LLC (Summit) alleging a violation by KPH, Inc. (KPH) of North Dakota Century Code section 49-23: One-Call Excavation Notice System, Case No. PU-17-338.

On September 1, 2017, the Commission sent a letter to KPH enclosing the One-Call Complaint in Case No. PU-17-338.

On September 15, 2017, KPH filed a response to the One-Call Complaint in Case No. PU-17-338.

On September 19, 2017, the Commission received a ND One-Call Complaint from Summit alleging a violation by KPH, Inc. (KPH) of North Dakota Century Code section 49-23: One-Call Excavation Notice System, Case No. PU-17-355.

On September 19, 2017, the Commission sent a letter to KPH enclosing the One-Call Complaint in Case No. PU-17-355.

On October 6, 2017, KPH filed a response to the One-Call Complaint in Case No. PU-17-355.

On November 28, 2017, the Public Service Commission Advocacy Staff (Advocacy Staff) and KPH filed a Consent Agreement for the resolution of Case No. PU-17-338 and Case No. PU-17-355.

**7    PU-17-355    Filed: 12/20/2017    Pages: 7**  
**Order on Consent Agreement**

Public Service Commission

**7    PU-17-338    Filed: 12/20/2017    Pages: 7**  
**Order on Consent Agreement**

Public Service Commission

## Discussion

Summit Utility Services, LLC is a foreign corporation authorized to do business in North Dakota with offices located at 8015 Haven Heights Rd, Missoula, Montana 59808.

KPH, Inc. is a North Dakota corporation authorized to do business in North Dakota with offices located at 9530 39<sup>th</sup> St S, Fargo, North Dakota 58104.

In Case No. PU-17-338 the complainant alleges 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. The complainant did not indicate that damages occurred or that utility customers were affected as a result of the incident.

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."

In Case No. PU-17-355 the complainant alleges 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. The complainant indicated that a 150 pair copper telecommunications cable serving a section of Mapleton, North Dakota was damaged as a result of the incident.

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.

As a result of its investigation, Advocacy Staff 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 Advocacy Staff engaged in good faith settlement discussions resulting in a Consent Agreement intended to resolve the violations alleged in Case No. PU-17-338 and Case No. PU-17-355.

Under the Consent Agreement, 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 this Order.

Having considered this matter, the Commission finds the Consent Agreement filed on November 28, 2017, is reasonable and acceptable. Therefore, the Commission issues the following:

**Order**

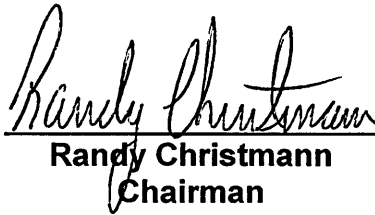
The Commission Orders:

1. 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.
2. The Consent Agreement filed by KPH and Advocacy Staff on November 28, 2017, is approved. A copy of the Consent Agreement is attached to and made a part of this Order.
3. KPH shall remit a penalty of \$1,000, payable to the North Dakota Public Service Commission within ten business days of service of this Order.

**PUBLIC SERVICE COMMISSION**



**Brian Kroshus  
Commissioner**



**Randy Christmann  
Chairman**



**Julie Fedorchak  
Commissioner**

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

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<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>	)	

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**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

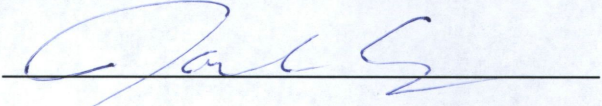
Adopting Consent Agreement (Order).

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>th</sup> day of November, 2017

PUBLIC SERVICE COMMISSION  
ADVOCACY STAFF – DAMAGE PREVENTION

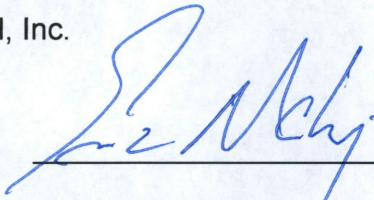
By: \_\_\_\_\_

  
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:

 President

{insert name and title}