

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
Wagner Construction, Inc.  
Damage Prevention Enforcement

Case No. PU-17-457

Public Service Commission  
Wagner Construction, Inc.  
Damage Prevention Enforcement

Case No. PU-17-458

Public Service Commission  
Wagner Construction, Inc.  
Damage Prevention Enforcement

Case No. PU-17-459

**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 **15th day of March, 2018**, 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:

Marty Goulet  
Wagner Construction, Inc.  
3151 Highway 53, Suite 1  
International Falls, MN 56649  
**Cert. No. 7017 2400 0001 0890 4537**

**Geralyn R. Schmaltz** further deposes and says that on the **15th day of March, 2018** 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:

Paul Riley  
Montana-Dakota Utilities Co.  
121 W 8<sup>th</sup> Avenue  
Williston, ND 58801

- 8    **PU-17-459**    Filed: 3/15/2018    Pages: 9  
Affidavit of Service, Cert. and Reg. Mail - Order on  
Consent Agreement
- 9    **PU-17-458**    Filed: 3/15/2018    Pages: 9  
Affidavit of Service, Cert. and Reg. Mail - Order on  
Consent Agreement
- 8    **PU-17-457**    Filed: 3/15/2018    Pages: 9  
Affidavit of Service, Cert. and Reg. Mail - Order on  
Consent Agreement

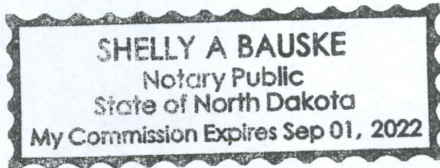
Case Nos. PU-17-457, PU-17-458, PU-17-459  
Affidavit of Service  
March 15, 2018  
Page 1 of 2

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

Subscribed and sworn to before me  
this **15th day of March, 2018**.

*Shelly A Bauske*

*Shelly A Bauske*  
Notary Public



SEAL

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Wagner Construction, Inc.  
Damage Prevention Enforcement**

**Case No. PU-17-457**

**Public Service Commission  
Wagner Construction, Inc.  
Damage Prevention Enforcement**

**Case No. PU-17-458**

**Public Service Commission  
Wagner Construction, Inc.  
Damage Prevention Enforcement**

**Case No. PU-17-459**

**ORDER ON CONSENT AGREEMENT**

**March 14, 2018**

**Preliminary Statement**

On November 8, 2017, the Commission received three ND One-Call Complaints from Montana-Dakota Utilities (Complainant) alleging violations by Wagner Construction, Inc. (Wagner) of North Dakota Century Code section 49-23: One-Call Excavation Notice System.

On November 15, 2017, the Commission sent three letters to Wagner, each letter enclosing a One-Call Complaint.

On December 27, 2017, Wagner responded to the three ND One-Call Complaints.

On February 26, 2018, the Public Service Commission Advocacy Staff (Advocacy Staff) and Wagner filed a Consent Agreement for the resolution of the three complaints, Case No. PU-17-457, Case No. PU-17-458 and Case No. PU-17-459.

**Discussion**

Wagner Construction, Inc. is a foreign business corporation authorized to do business in North Dakota with offices located at 3151 Highway 53, Suite 1, International Falls, Minnesota 56649.

In Case No. PU-17-457, Complainant alleges a violation by Wagner of North Dakota Century Code section 49-23-05(5) for failure to conduct excavation in a careful and prudent manner. Complainant estimated \$568.68 damage to a three-quarter inch

polyethylene natural gas service line interrupting gas service to one customer at Arnegard, North Dakota. Wagner was installing water main.

North Dakota Century Code section 49-23-05(5) provides that to avoid damage and to minimize interference a ticket holder shall "Conduct the excavation in a careful and prudent manner."

In Case No. PU-17-458, Complainant alleges a violation by Wagner 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. Complainant estimated \$6909.36 damage to a two-inch polyethylene natural gas service line interrupting gas service to 30 customers, a combination of residential and commercial customers, at Arnegard, North Dakota. Wagner was installing water main.

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.

In Case No. PU-17-459, Complainant alleges a violation by Wagner of North Dakota Century Code section 49-23-05(5) for failure to conduct excavation in a careful and prudent manner. Complainant estimated \$27,477.07 damage to a six-inch steel natural gas distribution main interrupting gas service to 25 homes in Tioga, North Dakota. Wagner was installing sewer main.

North Dakota Century Code section 49-23-05(5) provides that to avoid damage and to minimize interference a ticket holder shall "Conduct the excavation in a careful and prudent manner."

As a result of its investigation, Advocacy Staff concluded that Wagner violated North Dakota Century Code section 49-23-05(5) in Case No. PU-17-457 and in Case No. PU-17-459 by failing to conduct its excavation in a careful and prudent manner, and violated North Dakota Century Code section 49-23-04(1) in Case No. PU-17-458 by failing to contact the notification center and provide an excavation or location notice before beginning an excavation.

Wagner and Advocacy Staff engaged in good faith settlement discussions resulting in a Consent Agreement intended to resolve the violations alleged in Case No. PU-17-457, PU-17-458 and Case No. PU-17-459.

Under the Consent Agreement, Wagner agrees to be assessed a civil penalty of \$500 in Case No. PU-17-457, \$1,100 in Case No. PU-17-458 and \$5,400 in Case No. PU-17-459 for a total of \$7,000, 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 February 26, 2018, is reasonable and acceptable. Therefore, the Commission issues the following:

### Order

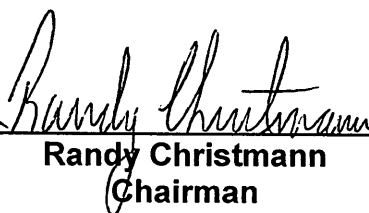
The Commission Orders:

1. Wagner violated North Dakota Century Code section 49-23-05(5) in Case No. PU-17-457 and in Case No. PU-17-459, and violated North Dakota Century Code section 49-23-04(1) in Case No. PU-17-458.
2. The Consent Agreement filed by Wagner and Advocacy Staff on February 26, 2018, is approved. A copy of the Consent Agreement is attached to and made a part of this Order.
3. Wagner shall remit a penalty of \$7,000, 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-17-457</b>
	)	<b>PU-17-458</b>
<b>vs.</b>	)	<b>PU-17-459</b>
	)	
<b>Wagner Construction, Inc.,</b>	)	<b>CONSENT AGREEMENT</b>
	)	
<b>Respondent .</b>	)	

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**Preliminary Statement**

This Consent Agreement is entered into by and between Wagner Construction, Inc. (Wagner) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket Nos. PU-17-457, PU-17-458 and PU-17-459.

On November 8, 2017, the Commission received a ND One-Call Complaint from Montana-Dakota Utilities (MDU) under Case No. PU-17-457. The complaint alleged a violation by Wagner of North Dakota Century Code section 49-23-05(5) for failing to conduct excavation in a careful and prudent manner. North Dakota Century Code section 49-23-05(5) provides that to avoid damage and to minimize interference a ticket holder shall "Conduct the excavation in a careful and prudent manner."

On November 8, 2017, the Commission received a ND One-Call Complaint from MDU under Case No. PU-17-458. The complaint alleged a violation by Wager 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 49-23-04(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.

On November 8, 2017, the Commission received a ND One-Call Complaint from MDU under Case No. PU-17-459. The complaint alleged a violation by Wager of North Dakota Century Code section 49-23-05(5) for failing to conduct excavation in a careful and prudent manner.

Having investigated the alleged violations, Staff believes that Wagner violated North Dakota Century Code section 49-23-05(5) in Case Nos. PU-17-457 and PU-17-459, and North Dakota Century Code section 49-23-04(1) in Case No. PU-17-458.

Wagner and Staff engaged in good faith settlement discussions resulting in this Consent Agreement. Having agreed that settlement of these proceedings 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 Wagner agree to the following, subject to the approval and acceptance of the Commission:

1. Wagner violated North Dakota Century Code section 49-23-05(5) in Case Nos. PU-17-457 and PU-17-459 by failing to conduct its excavation in a careful and prudent manner.
2. Wagner violated North Dakota Century Code section 49-23-04(1) in Case No. PU-17-458 by failing to contact the notification center and provide an excavation or location notice before beginning an excavation.
3. Wagner agrees to be assessed a civil penalty of \$500 in Case No. PU-17-457,

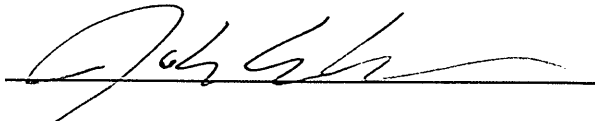
\$1100 in Case No. PU-17-458 and \$5400 in Case No. PU-17-459 for a total of \$7,000, payable to the North Dakota Public Service Commission within ten business days of service of an Order Adopting Consent Agreement (Order).

4. Wagner 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, Wagner 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 Wagner and bind Wagner for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 24th day of February, 2018

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 26th day of February, 2018

Wagner Construction, Inc.

By: Marten Goulet  
{Marten Goulet, Chief Financial Officer}