

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
Red Lake Builders Inc.  
Damage Prevention Enforcement

Case No. PU-18-78

AFFIDAVIT OF SERVICE 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 **12th day of April, 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:

Gordon Jallen  
Red Lake Builders Inc.  
Hyw 89 So.  
PO Box 250  
Red Lake, MN 56671  
**Cert. No. 7017 2400 0001 0889 8607**

**Geralyn R. Schmaltz** further deposes and says that on the **12th day of April, 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.

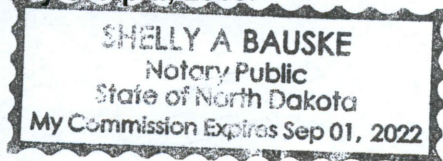
The envelope was addressed as follows:

Tim Olson  
Polar Communications  
110 4<sup>th</sup> Street East  
Park River, ND 58270

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

Subscribed and sworn to before me  
this **12th day of April, 2018**.

SEAL



*Geralyn R. Schmaltz*

*Shelly A. Bauske*  
Notary Public

9 PU-18-78 Filed: 4/12/2018 Pages: 6  
Affidavit of Service, Cert. & Reg. Mail - Order

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Red Lake Builders, Inc.  
Damage Prevention Enforcement**

**Case No. PU-18-78**

**ORDER ON CONSENT AGREEMENT**

**April 11, 2018**

**Preliminary Statement**

On February 7, 2018, the Commission received a ND One-Call Complaint from Polar Communications (Complainant) alleging a violation by Red Lake Builders, Inc. (RLB) of North Dakota Century Code section 49-23: One-Call Excavation Notice System.

On February 9, 2018, the Commission sent a letter to RLB enclosing the ND One-Call Complaint.

On February 16, 2018, RLB responded to the ND One-Call Complaint.

On March 29, 2018, the Public Service Commission Advocacy Staff (Advocacy Staff) and RLB filed a Consent Agreement for the resolution of the complaint.

**Discussion**

Red Lake Builders, Inc. is a foreign business corporation authorized to do business in North Dakota with offices located at Highway 89 S, Red Lake, Minnesota 56671-0250.

Complainant alleges a violation by RLB 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 \$1,581.12 damage to a 4-fiber optic telecommunications cable affecting telecommunication service to one customer near Pembina, North Dakota.

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."

As a result of its investigation, Advocacy Staff concluded that RLB violated North Dakota Century Code section 49-23-04(1) by failing to contact the notification center and provide an excavation or location notice before beginning an excavation.

RLB and Advocacy Staff engaged in good faith settlement discussions resulting in a Consent Agreement intended to avoid further administrative proceedings or litigation.

Under the Consent Agreement, RLB agrees to be assessed a civil penalty of \$500, payable to the North Dakota Public Service Commission, within ten business days of service of this Order.


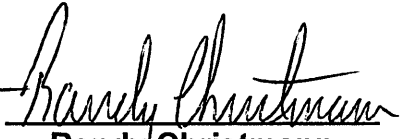

Having considered this matter, the Commission finds the Consent Agreement filed on March 29, 2018, is reasonable and acceptable. Therefore, the Commission issues the following:

### Order

The Commission Orders:

1. RLB violated North Dakota Century Code section 49-23-04(1).
2. The Consent Agreement filed by RLB and Advocacy Staff on March 29, 2018, is approved. A copy of the Consent Agreement is attached to and made a part of this Order.
3. RLB shall remit a penalty of \$500, payable to the North Dakota Public Service Commission within ten business days of service of this Order.

### PUBLIC SERVICE COMMISSION

		
<hr/>	<hr/>	<hr/>
<b>Brian Kroshus</b> Commissioner	<b>Randy Christmann</b> Chairman	<b>Julie Fedorchak</b> 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-18-78</b>
	)	
<b>vs.</b>	)	
	)	<b>CONSENT AGREEMENT</b>
<b>Red Lake Builders, Inc.,</b>	)	
	)	
<b>Respondent.</b>	)	

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**Preliminary Statement**

This Consent Agreement is entered into by and between Red Lake Builders, Inc. (RLB) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket No. PU-18-78.

On February 7, 2018, the Commission received a ND One-Call Complaint from Polar Communications (Polar) under Case No. PU-18-78. The complaint alleged a violation by RLB 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. 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 RLB violated

North Dakota Century Code section 49-23-04(1).

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

1. RLB violated North Dakota Century Code section 49-23-04(1) in Case No. PU-18-78 by failing to contact the notification center and provide an excavation or location notice before beginning an excavation.
2. RLB agrees to be assessed a civil penalty of \$500, payable to the North Dakota Public Service Commission within ten business days of service of an Order Adopting Consent Agreement (Order).
3. RLB 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, RLB 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.
4. 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

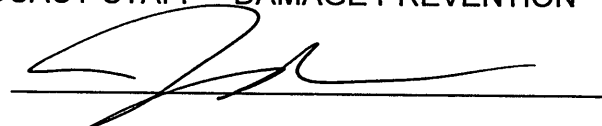
which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.

6. The undersigned is authorized to act on behalf of RLB and bind RLB for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 23 day of March, 2018

PUBLIC SERVICE COMMISSION  
ADVOCACY STAFF – DAMAGE PREVENTION

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

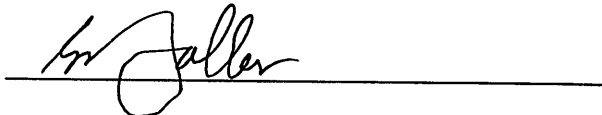


John M. Schuh  
Advocacy Counsel  
12<sup>th</sup> Floor, Dept. 408  
600 Boulevard Ave.  
Bismarck, ND 58505-0480

Dated this 26 day of February, 2018

Red Lake Builders, Inc.

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



Gordon Jallen  
Construction Manager