

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Diamond Willow Energy, LLC
Damage Prevention Enforcement

Case No. PU-18-199

AFFIDAVIT OF SERVICE BY 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 **26th** day of **February 2019**, she deposited in the United States Mail, Bismarck, North Dakota, **2** envelopes by first class mail, fully prepaid, securely sealed each containing a photocopy of:

- **Complaint**

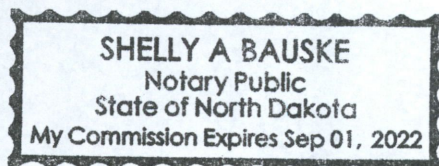
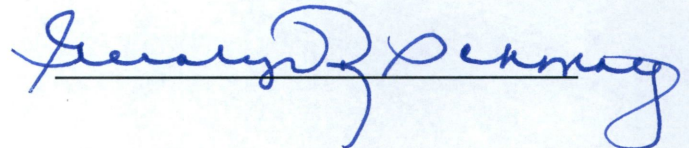
The envelopes were addressed as follows:

Diamond Willow Energy, LLC
301 1st Ave. E
New Town, ND 58763

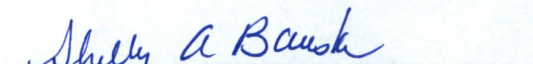
Frederica Smith – Registered Agent for
Diamond Willow Energy, LLC
3200 Southridge Ln.
Bismarck, ND 58504-9622

The addresses shown are the respective addressee's last reasonably ascertainable post office mail addresses.

Subscribed and sworn to before me
this **26th** day of **February 2019**.



(SEAL)


Notary Public

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

**Public Service Commission
Diamond Willow Energy, LLC
Damage Prevention Enforcement**

Case No. PU-18-199

Public Service Commission,)	
Complainant,)	
)	
vs.)	
)	Complaint
Diamond Willow Energy, LLC,)	
Respondent.)	

The Public Service Commission of North Dakota, by and through Advocacy Staff (Staff), for its complaint against Diamond Willow Energy, LLC, alleges the following:

I

Diamond Willow Energy, LLC, (DWE) is a North Dakota limited liability company with offices located at 301 1st Ave E, New Town, ND 58763, and a registered agent address of Frederica Smith, 3200 Southridge Ln, Bismarck, ND 58504-9622.

II

Arrow Pipeline, LLC (Arrow) is a foreign corporation authorized to do business in North Dakota.

III

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

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.

IV

On June 8, 2018, the Commission received a ND One-Call Complaint from Monica Howard, at Arrow. The complaint alleges a violation by DWE of North Dakota Century Code section 49-23-04(1) of the One-Call Excavation Notice System by failing to contact the notification center and provide an excavation or location notice before beginning any excavation.

V

On June 13, 2018, Commission staff issued a letter informing DWE of Arrow's complaint filing, and requested a response by June 27, 2018. As of February 12, 2019 no response was received.

VI

On or about June 6, 2018 at approximately 1:30PM, DWE personnel began an excavation with a hydrovac machine to expose a pipeline within one mile of coordinates 47.72297778, -102.34388889. As a result of this excavation, damage was caused by DWE's hydrovac equipment to Arrow's 8 inch natural gas and 6 inch crude oil pipelines. Arrow learned of the damage because they noticed what appeared to be excavation activity near their pipelines and approached the site to investigate. The cost to repair the coating on Arrow's pipelines was approximately \$70,805.65.

VII

There was no agreement between DWE and Arrow under North Dakota Century Code section 49-23-04(1) prior to excavation that would relieve DWE of its obligation to contact the notification center and provide an excavation or location notice before beginning any excavation.

VIII

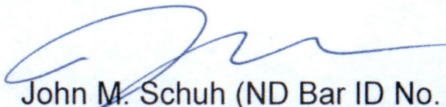
DWE violated North Dakota Century Code section 49-23-04(1) by failing to contact the notification center and provide an excavation or location notice before beginning any excavation.

Prayer for Relief

Based on the foregoing, Staff seeks the following relief:

1. That the Commission find DWE in violation of North Dakota Century Code ch.49-23 for failing to comply with the One Call requirements enumerated in North Dakota Century Code section 49-23-04(1).
2. That the Commission impose an appropriate civil penalty up to \$25,000, but at least \$4,600.
3. Such other relief that the Commission finds just and proper.

Dated this 25th day of February, 2019



John M. Schuh (ND Bar ID No. 08138)
Special Assistant Attorney General
600 E. Boulevard Dept. 408
Bismarck, ND 58505-0480
(701) 328-2421

Attorney for Advocacy Staff

and

**Victor Schock
Public Utility Analyst
600 E Boulevard Ave – Dept 408
Bismarck, North Dakota 58505-0480
701-328-3397
Public Service Commission Advocacy Staff**

The Respondent must serve an answer to this complaint upon the Complainant and the Commission within twenty days after service of the complaint, or the Commission may deem the complaint to be admitted.