

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	Case No. PU-18-199
)	
Complainant,)	NOTICE OF MOTION FOR
vs.)	ORDER OF DEFAULT
)	
Diamond Willow Energy, LLC.,)	
)	
Respondent.)	

TO: Respondent Diamond Willow Energy, LLC. (“Diamond Willow”), 301 1st Ave E, New Town, ND 58763, and Registered Agent: Frederica Smith, 3200 Southridge LN Bismarck, ND 58504.

PLEASE TAKE NOTICE that the Public Service Commission, Advocacy Staff, Movant in the above proceeding, respectfully moves for an order declaring Diamond Willow in default. The motion is attached to this notice and by reference made a part hereof.

YOUR ARE HEREWITH NOTIFIED that the Notice of Motion and Motion for Judgment of Default has been submitted pursuant to N.D.C.C. § 28-32-21(e) and N.D. Admin. Code art. 69-02. The Public Service Commission may deem the Formal Complaint admitted and may enter an order in default as the facts and law may warrant. If the Public Service Commission rules in favor of Advocacy Staff’s motion, you have (7) days after service of the default notice, order and grounds to file a written motion with the Public Service Commission requesting that the default order be vacated and stating the grounds relied upon.

Bismarck, North Dakota, this 13th of September 2019.



John M. Schuh (ND ID # 08138)
Advocacy Staff Counsel
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(701) 328-2421

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	Case No. PU-18-199
)	
Complainant,)	
)	
vs.)	MOTION FOR
)	ORDER OF DEFAULT
Diamond Willow Energy, LLC.,)	AND MEMORANDUM OF
)	LAW
Respondent.)	

MOTION FOR ORDER OF DEFAULT

Public Service Commission Advocacy Staff (“Advocacy Staff”) respectfully seeks an order in default against Respondent, Diamond Willow Energy, LLC., (“Diamond Willow”). In support of the motion, Advocacy Staff states the following:

MEMORANDUM

Pursuant to N.D.C.C. § 28-32-21(e) and N.D. Admin. Code § 69-02-02-03(1), a Formal Complaint “may inform the respondent that an answer to the complaint must be served upon the complainant and the agency with which the complaint is filed within twenty days after service of the complaint, or the agency may deem the complaint to be admitted.” On 12 July 2019, Diamond Willow received the Formal Complaint filed with the Commission via service by the McKenzie County Sheriff’s office. Diamond Willow failed to respond to the Formal Complaint within the time allotted under N.D.C.C. § 28-32-21(e). Having failed to answer the complaint, the Commission may deem the Formal Complaint to be admitted by Diamond Willow and “enter an order in default as the facts and law may warrant.” N.D.C.C. § 28-32-21(e).

BACKGROUND

On 8 June 2018, Arrow Pipeline, LLC submitted a ND One-call complaint alleging Diamond Willow failed to contact the notification center and provide an excavation or location notice before beginning any excavation. *See Attached ND One-Call Complaint.* On 13 June 2018, Commission Staff enclosed a copy of the ND One-Call Complaint to Diamond Willow and requested a response and written account of the event, including the applicable One Call locate ticket number for work performed at the location listed in the ND One-Call Complaint. No response has been received as of 13 September 2019. On 8 November 2018 the Commission appointed Advocacy Staff to the case.

On 26 February 2019, based on its investigation, Advocacy Staff filed a Formal Complaint alleging Diamond Willow was in violation of N.D.C.C. § 49-23-04(1) by failing to contact the notification center and provide an excavation or location notice before beginning any excavation. *See Attached Formal Complaint.* On 11 April 2019, the Commission found the Formal Complaint stated a *prima facie* case. Service of the Formal Complaint was initiated on 28 June 2019 via the McKenzie County Sheriff's office to Diamond Willow. The Formal Complaint was served on Melanie Brugh-Johnson at Diamond Willow Energy, LLC, 301 1st Ave E, New Town, ND 58763 on 12 July 2019. Staff has made multiple attempts to contact Diamond Willow, including by phone. Personnel capable of speaking on behalf of Diamond Willow did not respond.

In Section VIII of the Formal Complaint Diamond Willow was informed that “[t]he 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.” Having received no answer to the Formal Complaint by 1 August 2019, the Commission may deem the Formal Complaint to be admitted and enter an Order of Default

pursuant to N.D.C.C. § 28-32-21(e). As of 13 September 2019, Diamond Willow has not responded and has not responded to any attempt by Advocacy Staff to communicate.

CONCLUSION

For these reasons, Advocacy Staff respectfully requests the Public Service Commission enter an Order of Default against Diamond Willow, impose an appropriate civil penalty up to \$25,000, but at least \$4,600, and such other relief that the Commission finds just and proper.

Dated: September 13, 2019

Respectfully,



John M. Schuh (ND ID# 08138)
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**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.)	
)	
Diamond Willow Energy, LLC,)	Complaint
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.



ND ONE-CALL COMPLAINT

Public Service Commission

SFN 59067 (5-17)

To allege a violation of the One-Call Excavation Notice System Law: North Dakota Century Code Chapter 49-23

PART A – WHO IS SUBMITTING THIS COMPLAINT (COMPLAINANT)

Company/Person Arrow Pipeline, LLC	Street Address 811 Main Street, STE 3400	City Houston	State and Zip Code TX 77002
Telephone and Cell Phone Number 713-380-3204	Email Address monica.howard@crestwoodlp.com		Date 06/07/2018
<input checked="" type="checkbox"/> Complainant is willing and able to testify on the complaint if matter goes to formal hearing			

PART B – WHO VIOLATED THE ONE-CALL REGULATIONS (RESPONDENT)

Company/Person Diamond Willow Energy, LLC	Street Address 301 1st Ave E	City New Town	State and Zip Code ND, 58763
Telephone and Cell Phone Number 701-627-4831	Email Address unknown		

PART C – ALLEGED VIOLATION

<input checked="" type="checkbox"/> Operator failed to provide or update the information provided to the notification center on a timely basis <input type="checkbox"/> Excavator failed to provide excavation or location notice at least 48 hours before beginning any excavation <input type="checkbox"/> Excavator failed to provide required information in excavation or location notice <input type="checkbox"/> Notification center failed to transmit the notice to every operator that has an underground facility in the area of the excavation <input type="checkbox"/> Notification center failed to inform the excavator of the names of operators of underground facilities in the area <input type="checkbox"/> Operator failed to locate and mark underground facility within 48 hours <input type="checkbox"/> Excavation started prior to underground facility locate <input type="checkbox"/> Operator failed to mark underground facility within 24 inches horizontally <input type="checkbox"/> Excavator failed to renew excavation or location request prior to the expiration of the twenty-one-day period <input type="checkbox"/> Excavator failed to conduct the excavation in a careful and prudent manner to avoid damage of underground facilities <input type="checkbox"/> Excavator failed to maintain the markings during excavation <input type="checkbox"/> Other (identify the specific section of NDCC Chapter 49-23) <u>no one call was ever placed</u>
Location of Violation: within one mile of coordinates: 47 deg, 43 min, 22.72 sec; 102 deg, 20 min, 38.34 sec
Date and Time of Violation: discovered the morning of 06/07/2018
Description (summarize the observations on which you rely to allege the violation) <i>If more space is required, please provide the description on a separate page.</i> An authorized contractor of Arrow's arrived on site to perform work and observed an unauthorized hole exposing existing Arrow pipelines. It is assumed to be the same contractor was that observed performing unauthorized excavation of Arrow pipelines the previous day at the request of the landowner. Arrow is investigating the amount of damage to the pipelines and will safely backfill the hole.

PART D – DAMAGE

Fatalities none	Injuries none	In-patient Hospitalization none
Underground facility type(s) and Operator(s) affected: Arrow Pipeline, 1 gas pipeline, 1 crude pipeline, 1 water pipeline.		
Estimated Value of Damage (damage as defined under NDCC Chapter 49-23): \$ unknown at this time	Number of Customers Affected 1	
Other impact of event: photos not readily available.		
Please attach photos of Event Area or Damaged Facility		

PART I – SIGNATURE

Signature of Person Filing Complaint 	Date
--	------

Submit

If the "Submit" function is not working properly, please print the completed form and then either **email to** ndpsc@nd.gov, **fax to** 701-328-2410 or **send to** Public Service Commission, 600 E Boulevard Ave Dept 408, Bismarck ND 58505-0480.

Telephone: (701) 328-2400



ND ONE-CALL COMPLAINT

Public Service Commission

SFN 59067 (5-17)

To allege a violation of the One-Call Excavation Notice System Law: North Dakota Century Code Chapter 49-23

PART A – WHO IS SUBMITTING THIS COMPLAINT (COMPLAINANT)

Company/Person Arrow Pipeline, LLC	Street Address 811 Main Street, STE 3400	City Houston	State and Zip Code TX 77002
Telephone and Cell Phone Number 713-380-3204	Email Address monica.howard@crestwoodlp.com		Date 06/07/2018
<input checked="" type="checkbox"/> Complainant is willing and able to testify on the complaint if matter goes to formal hearing			

PART B – WHO VIOLATED THE ONE-CALL REGULATIONS (RESPONDENT)

Company/Person Diamond Willow Energy, LLC	Street Address 301 1st Ave E	City New Town	State and Zip Code ND, 58763
Telephone and Cell Phone Number 701-627-4831	Email Address unknown		

PART C – ALLEGED VIOLATION

<input checked="" type="checkbox"/> Operator failed to provide or update the information provided to the notification center on a timely basis <input type="checkbox"/> Excavator failed to provide excavation or location notice at least 48 hours before beginning any excavation <input type="checkbox"/> Excavator failed to provide required information in excavation or location notice <input type="checkbox"/> Notification center failed to transmit the notice to every operator that has an underground facility in the area of the excavation <input type="checkbox"/> Notification center failed to inform the excavator of the names of operators of underground facilities in the area <input type="checkbox"/> Operator failed to locate and mark underground facility within 48 hours <input type="checkbox"/> Excavation started prior to underground facility locate <input type="checkbox"/> Operator failed to mark underground facility within 24 inches horizontally <input type="checkbox"/> Excavator failed to renew excavation or location request prior to the expiration of the twenty-one-day period <input type="checkbox"/> Excavator failed to conduct the excavation in a careful and prudent manner to avoid damage of underground facilities <input type="checkbox"/> Excavator failed to maintain the markings during excavation <input type="checkbox"/> Other (identify the specific section of NDCC Chapter 49-23) <u>no one call was ever placed</u>
Location of Violation: within one mile of coordinates: 47 deg, 43 min, 22.72 sec; 102 deg, 20 min, 38.34 sec
Date and Time of Violation: discovered at approximately 1:30PM CST on 06/06/2018
Description (summarize the observations on which you rely to allege the violation) <i>If more space is required, please provide the description on a separate page.</i> One of Arrow's inspectors observed a hydrovac exposing existing Arrow pipelines. When the inspector approached the crew, the crew responded that they were intentionally exposing the pipelines as a favor to the landowner, Ms. Mandan. The crews were shut down. Arrow is investigating the amount of damage to the pipelines and will safely backfill the hole.

PART D – DAMAGE

Fatalities none	Injuries none	In-patient Hospitalization none
Underground facility type(s) and Operator(s) affected: Arrow Pipeline, 1 gas pipeline, 1 crude pipeline, 1 water pipeline.		
Estimated Value of Damage (damage as defined under NDCC Chapter 49-23): \$ unknown at this time	Number of Customers Affected 1	
Other impact of event: photos not readily available.		
Please attach photos of Event Area or Damaged Facility		

PART I – SIGNATURE

Signature of Person Filing Complaint <i>Monica Howard</i>	Date 6/7/18
--	----------------

Submit

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