

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	Case No. PU-18-199
)	
vs.)	CONSENT AGREEMENT
)	
Diamond Willow Energy, LLC)	
)	
Respondent.)	

Preliminary Statement

This Consent Agreement is entered into by and between Diamond Willow Energy, LLC ("Diamond Willow") and the Public Service Commission Advocacy Staff ("Staff") (together, the "Parties") for resolution of Case No. PU-18-199 (the "Case").

On June 8, 2018, the Commission received a ND One-Call Complaint from Monica Howard with Arrow Pipeline, LLC, which was subsequently revised on June 11, 2018 (the "Complaint"). The Complaint alleged a violation by Diamond Willow of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

North Dakota Century Code section 49-23-04(1) states that "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, Staff concluded that Diamond Willow violated North Dakota Century Code section 49-23-04(1).

Diamond Willow 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, the Staff and Diamond Willow make the following agreement:

1. Staff and Diamond Willow agree to settle the Case on the following terms:
 - a. Diamond Willow, without conceding a violation occurred, will not contest Staff's determination that it violated N.D.C.C. § 49-23-04(1), by failing to provide an excavation or location notice before beginning any excavation.
 - b. Diamond Willow agrees to be assessed a civil penalty of \$4,600, payable to the North Dakota Public Service Commission within ten business days of service of an Order approving or accepting the Consent Agreement ("Order"). Staff agrees no other proceeding will be initiated against Diamond Willow and no other remedy or penalty will be sought based on the violation alleged in the Case.
 - c. If approved by the Commission, Diamond Willow expressly waives any further procedural requirements with respect to the issuance of the Consent Agreement and Order. Provided the Commission adopts this Consent Agreement and issues an Order consistent with it, Diamond Willow waives its right to contest this matter or the validity of this Consent Agreement and Order, including all rights to administrative or judicial hearings or appeals of the Case.
 - d. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement and Order.

2. 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.
3. The undersigned on behalf of Diamond Willow is authorized to act on behalf of Diamond Willow and bind Diamond Willow for purposes of this Consent Agreement, knows and fully understands the content and effect.

Dated this 23rd day of October, 2019

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By: _____


John M. Schuh
Special Assistant Attorney General
12th Floor, Dept. 408
600 Boulevard Ave.
Bismarck, ND 58505-0480

Dated this 23 day of October, 2019

Diamond Willow Energy LLC

By: _____

