

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 CERTIFIED & 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 **4th day of December 2019** 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 a photocopy of:

- **Order on Consent Agreement**

The envelope was addressed as follows:

Diamond Willow Energy, LLC
301 1st Avenue East
New Town, ND 58763
Cert. No. 7018 2290 0000 6607 8459

Geralyn R. Schmaltz further deposes and says that on the **4th day of December 2019**, she deposited in the United States mail, Bismarck, North Dakota, **one** envelope by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

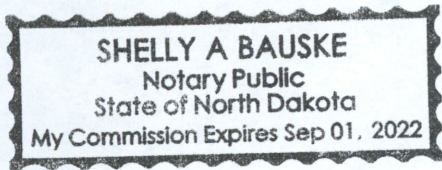
The envelope was addressed as follows:

Monica Howard
Arrow Pipeline, LLC
811 Main Street Suite 3500
Houston, TX 77002

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **4th day of December 2019**.

George R. Schmay



SEAL

Shelly A Bauske
Notary Public

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No. PU-18-199

ORDER ON CONSENT AGREEMENT

December 3, 2019

Preliminary Statement

On June 8, 2018, the Commission received a ND One-Call Complaint from Arrow Pipeline, L.L.C. (Arrow) alleging a violation by Diamond Willow Energy, L.L.C. (Diamond Willow) of North Dakota Century Code (N.D.C.C.) section 49-23-04(1). The complaint was subsequently revised on June 11, 2018.

On June 13, 2018, Advocacy Staff (Staff) sent a letter to Diamond Willow enclosing the revised June 11, 2018 ND One-Call Complaint and requesting a response by June 27, 2018.

On February, 26 2019, Staff filed a formal complaint, requesting that the Commission find Diamond Willow in violation of N.D.C.C. section 49-23-04(1).

On April 11, 2019, the Commission found the complaint filed on February 26, 2019, states a prima facie case, and served Diamond Willow with the complaint on July 12, 2019.

Diamond Willow failed to respond to the complaint within the time allotted under N.D.C.C. section 28-32-21(e).

On September 13, 2019, Staff moved for an order declaring Diamond Willow in default.

On October 24, 2019, a Consent Agreement, between Staff and Diamond Willow was filed for the resolution of the ND One Call Complaint in Case No. PU-18-199.

Discussion

Diamond Willow Energy, LLC, (Diamond Willow) is a North Dakota limited liability company with offices located at 301 1st Avenue East, New Town, N.D. 58763.

Arrow alleges a violation by Diamond Willow of N.D.C.C. section 49-23-04(1) for failing to contact the notification center and provide an excavation or location notice before beginning an excavation.

On or about June 6, 2018, Diamond Willow personnel began an excavation. As a result of this excavation, damage was caused by Diamond Willow's equipment to Arrow's 8-inch natural gas and 6-inch crude oil pipelines. The cost to repair the coating on Arrow's pipelines was approximately \$70,805.65.

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

N.D.C.C. section 49-23-04(1) provides that, "[e]xcept 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 violation, Staff concluded that Diamond Willow violated N.D.C.C. section 49-23-04(1).

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

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).

Having considered this matter, the Commission finds the Consent Agreement filed on October 24, 2019, is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

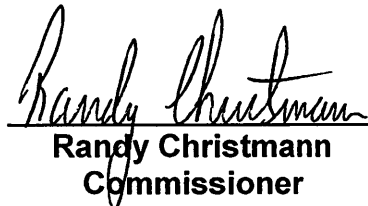
1. The Consent Agreement of Diamond Willow and Staff, filed October 24, 2019, is approved. A copy of the Consent Agreement is attached to and made a part of the Order.

2. Diamond Willow is assessed a civil penalty of \$4,600 payable to the North Dakota Public Service Commission within ten business days of service of this Order.

PUBLIC SERVICE COMMISSION


Julie Fedorchak
Commissioner


Brian Kroshus
Chairman


Randy Christmann
Commissioner

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:

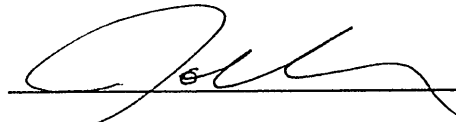
1. Staff and Diamond Willow agree to settle the Case on the following terms:
 - a. Diamond Willow, without conceding a violation occurred, will not contest Staff's determination that it violated N.D.C.C. § 49-23-04(1), by failing to provide an excavation or location notice before beginning any excavation.
 - 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: _____