

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Nodak Plbg. & Heating, Inc.
Damage Prevention Enforcement

Case No. PU-18-386

AFFIDAVIT OF SERVICE BY CERTIFIED AND ELECTRONIC 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 **30th day of May 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:

Garyl Gartner
NoDak Plumbing & Heating, Inc.
2141 37th Street
Mandan, ND 58554
Cert. No. 7018 2290 0000 9934 4071

Geralyn R. Schmaltz further deposes and says that on the **30th day of May 2019**, she sent an electronic message to **1** addressee, each including an electronic copy in portable document format of the same document.

The electronic mail was addressed as follows:

Paul Fitterer
Capital Electric Cooperative
paulf@capitalelec.com

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

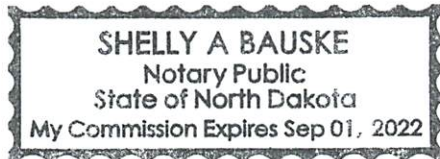
Subscribed and sworn to before me
this **30th day of May 2019**.





Notary Public

SEAL



STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Nodak Plbg. & Heating, Inc.
Damage Prevention Enforcement

Case No. PU-18-386

ORDER ON CONSENT AGREEMENT

May 29, 2019

Preliminary Statement

On November 9, 2018, the Commission received a ND One-Call Complaint from Capital Electric Cooperative (CEC) alleging a violation by NoDak Plbg. & Heating, Inc. (NoDak) of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

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

On November 23, 2018, NoDak filed a response to the November 9, 2018 ND One-Call Complaint.

On May 14, 2019, a Consent Agreement, between Public Service Commission Advocacy Staff (Advocacy Staff) and NoDak, was filed for the resolution of the complaint.

Discussion

NoDak Plbg. & Heating, Inc. is a North Dakota business corporation with office(s) located at 2141 37th Street, Mandan, North Dakota 58554-8237.

CEC alleges a violation by NoDak of North Dakota Century Code section 49-23-04(4) for beginning an excavation prior to receiving notice that all facilities in the excavation area had been located or cleared or the expiration of the location period. The Complaint and NoDak's response indicate that the excavation activity, related to installing water and sewer services, caused \$4,759.07 of damage to two CEC primary 15 kilovolt underground cables, and caused an electrical outage for approximately one hour. Customers affected included several businesses, a City of Bismarck wastewater pump, Bismarck Fire Department station #3, and over 300 residential customers.

North Dakota Century Code section 49-23-04(4) provides that "An excavator may begin excavation in a location when the excavator has received notice that all facilities

have been located or cleared or at the expiration of the location period or extension of the location period.”

As a result of its investigation, Advocacy Staff concluded that NoDak violated North Dakota Century Code section 49-23-04(4).

NoDak 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, NoDak agrees to be assessed a civil penalty of \$6,800. NoDak agrees to remit \$5,800 of the \$6,800, payable to the North Dakota Public Service Commission within ten business days of service of an Order Adopting Consent Agreement (Order). The remaining \$1,000 civil penalty is suspended on the condition that NoDak commits no further violation of North Dakota Century Code chapter 49-23 within five years of the date of the Order.

Having considered this matter, the Commission finds the Consent Agreement filed on May 14, 2019, is reasonable and acceptable. Therefore, the Commission issues the following:



Order

The Commission Orders:

1. The Consent Agreement of NoDak and Advocacy Staff, filed May 14, 2019, is approved. A copy of the Consent Agreement is attached to and made a part of this Order.
2. NoDak is assessed a civil a penalty of \$6,800.
3. NoDak shall remit \$5,800 civil penalty, payable to the North Dakota Public Service Commission within ten business days of service of this Order. The remaining \$1,000 civil penalty is suspended on the condition that NoDak commits no further violation of North Dakota Century Code chapter 49-23 within five years of the date of the Order.
4. In the event the Commission finds NoDak violated North Dakota Century Code chapter 49-23 within five years of the date of this Order, NoDak shall remit the suspended

portion of the penalty, \$1,000, within the time ordered by the Commission and, in addition, any penalties assessed for the subsequent violation.

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-18-386
)	
vs.)	
)	CONSENT AGREEMENT
NoDak Plbg. and Heating, Inc.,)	
)	
Respondent .)	

Preliminary Statement

This Consent Agreement is entered into by and between NoDak Plumbing and Heating, Inc. (NoDak) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket No. PU-18-386.

On November 9, 2018, the Commission received a ND One-Call Complaint from Capital Electric Cooperative (CEC). The complaint alleged a violation by NoDak of North Dakota Century Code section 49-23-04(4) for beginning an excavation prior to receiving notice that all facilities in the excavation area have been located or cleared or the expiration of the locate period.

North Dakota Century Code section 49-23-04(4) provides that "An excavator may begin excavation in a location when the excavator has received notice that all facilities

have been located or cleared or at the expiration of the location period or extension of the location period.”

Having investigated the alleged violations, Staff believes that NoDak violated North Dakota Century Code section 49-23-04(4).

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

1. NoDak violated North Dakota Century Code section 49-23-04(4) by beginning an excavation prior to receiving notice that all facilities in the excavation area have been located or cleared or the expiration of the locate period.
2. NoDak agrees to be assessed a civil penalty of \$6,800. NoDak agrees to remit \$5,800 of the \$6,800, payable to the North Dakota Public Service Commission within ten business days of service of an Order Adopting Consent Agreement (Order). The remaining \$1,000 civil penalty is suspended on the condition that NoDak commits no further violation of North Dakota Century Code 49-23 within five years of the date of the Order.
3. NoDak consents to the filing of the Consent Agreement and an Order and hereby waives any further procedural requirements with respect to the Order's issuance. Provided the Public Service Commission adopts this Consent Agreement and issues an Order consistent with it, NoDak 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 NoDak and bind NoDak for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 13th day of May, 2019

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By: _____


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

Dated this 6 day of May, 2019

NoDak Plbg. and Heating, Inc.

By: *Sayl Sarkis* / President
{insert name and title}