

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
Dakota Services / Muriel Close  
Damage Prevention Enforcement

Case No. PU-19-113

AFFIDAVIT OF SERVICE BY CERTIFIED 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 **24th day of October 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 photocopy of:

- **Complaint**
- **Motion Finding Complaint States a *Prima Facie* Case**

The envelope was addressed as follows:

Muriel Close  
Dakota Services  
PO Box 921  
Watford City, ND 58854-0921  
**Cert. No. 7018 2290 0000 6607 8282**

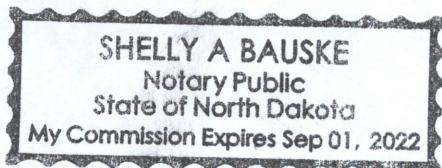
The address shown is the respective addressee's last reasonably ascertainable mailing address.



Subscribed and sworn to before me  
this **24th day of October 2019**.



Notary Public



SEAL

7 **PU-19-113** Filed: 10/24/2019 Pages: 6  
**Affidavit of Service, Cert. Mail - Complaint and  
Commission Motion**

Public Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

Public Service Commission  
Dakota Services / Muriel Close  
Damage Prevention Enforcement

Case No. PU-19-113

Public Service Commission,	)	
Complainant,	)	
vs.	)	
Dakota Services	)	Complaint
Respondent.	)	

The Public Service Commission of North Dakota, by and through Advocacy Staff (Staff), for its complaint against Dakota Services, alleges and shows the following:

I

Dakota Services is a trade name wholly owned by Muriel O Close whose mailing address is, PO BOX 921, Watford City, ND 58854-0921. Dakota Services is subject to the jurisdiction of the North Dakota Public Service Commission (Commission) and is an "excavator" as defined by N.D.C.C. § 49-23-01(8).

II

The Commission has been granted jurisdiction pursuant to North Dakota Century Code chapter 49-23 and N.D.C.C. § 49-07-01.1. N.D.C.C. § 49-07-1.1 provides that "[a] violation occurring under chapter 49-23, in addition to any other penalty, is subject to a civil penalty not to exceed twenty-five thousand dollars."

### 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

North Dakota Administrative Code section 69-02-04-05 provides:

In any proceeding in which the commission is authorized to act after opportunity for hearing, opportunity is afforded by service of notice fixing a reasonable period of time within which any person desiring to be heard may file a protest or request for a hearing. If a protest or request for hearing is not filed within the time provided, the commission may dispose of the matter on the basis of the pleadings, other submittals, and the studies and recommendations of the staff. A party not requesting oral hearing in the party's pleading is deemed to have waived a hearing for the purpose of the decision, but not for the purpose of applying for rehearing with respect to the decision. If a person requests a hearing but does not show good cause, the commission may determine the matter without a hearing.

### V

On April 1, 2019, the Commission received a ND One-Call Complaint from Juelie Bancroft with the City of Arnegard. The complaint alleges a violation by Dakota Services 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.

## VI

On March 29, 2019, Dakota Services personnel began an excavation to re-level a structure at 215 Frontage Road, Arnegard, ND. No excavation notice was found in the ND One-Call system for this time period, nor was one provided by Dakota Services. No damage was caused as a result of this excavation.

## VII

On April 5, 2019, Commission staff issued a letter informing Dakota Services of the City of Arnegard's complaint filing, and requested a response by April 18, 2019. Having received no response to the letter, staff was able to contact Dakota Services by phone on June 4, 2019. On June 18, 2019 Dakota Services filed a response to the complaint. The response stated among other things that four inches of dirt was scratched away to be able to shim the building up.

## VIII

Dakota Services 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.

## IX

The North Dakota Public Service Commission Damage Prevention Plan provides:

### **D PROPOSED CIVIL PENALTIES:**

1. The following criteria must be used by Commission staff to determine if a civil penalty should be proposed when filing a formal complaint:
  - a. The nature, circumstances and severity of the complaint;
  - b. The degree of suspected fault on the part of the respondent;
  - c. The respondent's history of prior violations or complaints;

- d. The respondent's ability to pay;
- e. Any good faith effort by the respondent in attempting to achieve compliance; and
- f. The effect the penalty may have on the respondent's ability to continue in business.

X

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.

### Relief Requested

Based on the foregoing, Staff seeks the following relief:

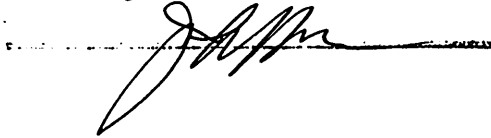
1. That the Commission find Dakota Services violated North Dakota Century Code ch.49-23 with the One Call requirements enumerated in North Dakota Century Code section 49-23-04(1).
2. That the Commission impose an appropriate civil penalty up to \$25,000, but at least \$500.
3. Such other relief that the Commission finds just and proper.

Dated this 12<sup>th</sup> day of September, 2019

Brian Johnson (ND Bar ID No. 07937)  
Special Assistant Attorney General  
600 E Boulevard Ave – Dept. 408  
Bismarck, North Dakota 58505-0480  
701-328-2407  
Attorney for Advocacy Staff

APPROVED

FILED 22 OCT 2019



STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission  
Dakota Services / Muriel Close  
Damage Prevention Enforcement

Case No. PU-19-113

MOTION

October 22, 2019

I move the Commission find the Formal Complaint filed by the North Dakota Public Service Commission Advocacy Staff on September 12, 2019, states a *prima facie* case, and serve the Complaint on the Respondent in Public Service Commission, Dakota Services / Muriel Close, Damage Prevention Enforcement, Case No. PU-19-113.