

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

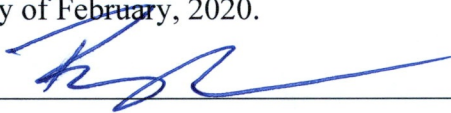
PUBLIC SERVICE COMMISSION,)	Case No. PU-19-113
)	
Complainant,)	NOTICE OF MOTION FOR
vs.)	ORDER OF DEFAULT
)	
Dakota Services)	
)	
Respondent.)	

TO: Dakota Services, PO Box 921, Watford City, ND58854-0921.

PLEASE TAKE NOTICE that the Public Service Commission, Advocacy Staff, Movant in the above proceeding, respectfully moves for an order declaring Dakota Services 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 26th day of February, 2020.



Brian Johnson
Special Assistant Attorney General Bar ID 07397
North Dakota Public Service Commission
600 East Boulevard Avenue Dept. 408
Bismarck ND, 58505
701-328-2407

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	Case No. PU-19-113
)	
Complainant,)	
)	MOTION FOR
vs.)	ORDER OF DEFAULT
)	AND MEMORANDUM OF
Dakota Services,)	LAW
)	
Respondent.)	

MOTION FOR ORDER OF DEFAULT

Public Service Commission Advocacy Staff (“Advocacy Staff”) respectfully seeks an order in default against Respondent, Dakota Services. 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 January 2, 2020, Dakota Services received the Formal Complaint filed with the Commission via certified mail. Dakota Services 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 Dakota Services and “enter an order in default as the facts and law may warrant.” N.D.C.C. § 28-32-21(e).

BACKGROUND

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. *See Attached ND One-Call Complaint.* 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. On 12 September 2019 the Commission appointed Advocacy Staff to the case.

On 12 September 2019, based on its investigation, Advocacy Staff filed a Formal Complaint alleging Dakota Services violated 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 22 October 2019, the Commission found the Formal Complaint stated a *prima facie* case. Service of the Formal Complaint was initiated on 24 October 2019 via certified mail by Geralyn R. Schmaltz to Muriel Close, Owner of the trade name Dakota Services, PO Box 921, Watford City, ND 58854-0921 (Cert. No. 7018 2290 0000 6607 8282). A return receipt was signed by Muriel Close on 2 January 2020. *See Attached Return Ticket.*

In Section X of the Formal Complaint, Dakota Services 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 22 January 2020, 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 26 February 2020, Dakota Services 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 Dakota Services, impose an appropriate civil penalty up to \$25,000, but at least \$500, and such other relief that the Commission finds just and proper.

Dated: February 26th, 2020

Respectfully,



Brian Johnson
Special Assistant Attorney General Bar ID 07397
North Dakota Public Service Commission
600 East Boulevard Avenue Dept. 408
Bismarck ND, 58505
701-328-2407



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 <i>City of Arnegard</i>	Street Address <i>211 Frontage RD</i>	City <i>Arnegard</i>	State and Zip Code <i>ND 58835</i>
Telephone and Cell Phone Number <i>701-586-3453 701-713-6611</i>	Email Address <i>j.bancroft@nd.gov</i>		Date <i>4/1/19</i>
<input 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 <i>Dick's Services / Muriel Close</i>	Street Address <i>215 Frontage RD</i>	City <i>Arnegard</i>	State and Zip Code <i>ND 58835</i>
Telephone and Cell Phone Number	Email Address		

PART C - ALLEGED VIOLATION

Operator failed to provide or update the information provided to the notification center on a timely basis

Excavator failed to provide excavation or location notice at least 48 hours before beginning any excavation

Excavator failed to provide required information in excavation or location notice

Notification center failed to transmit the notice to every operator that has an underground facility in the area of the excavation

Notification center failed to inform the excavator of the names of operators of underground facilities in the area

Operator failed to locate and mark underground facility within 48 hours

Excavation started prior to underground facility locate

Operator failed to mark underground facility within 24 inches horizontally

Excavator failed to renew excavation or location request prior to the expiration of the twenty-one-day period

Excavator failed to conduct the excavation in a careful and prudent manner to avoid damage of underground facilities

Excavator failed to maintain the markings during excavation

Other (Identify the specific section of NDCC Chapter 49-23) _____

Location of Violation:
215 Frontage RD

Date and Time of Violation:
3-29-19 excavation began 4/1/19 @ 9:42am hole still open

Description (summarize the observations on which you rely to allege the violation) if more space is required, please provide the description on a separate page.

PART D - DAMAGE

Fatalities	Injuries	In-patient Hospitalization
Underground facility type(s) and Operator(s) affected:		
Estimated Value of Damage (damage as defined under NDCC Chapter 49-23): \$		Number of Customers Affected
Other Impact of event:		
Please attach photos of Event Area or Damaged Facility		

PART I - SIGNATURE

Signature of Person Filing Complaint <i>J. Bancroft</i>	Date <i>4/1/19</i>
--	-----------------------

Submit

If the "Submit" function is not working properly, please print the cc fax to 701-328-2410 or send to Public Service Commission, 600

To whom it may concern:

On Friday March 29, 2019, I received a phone call in the afternoon asking if the people located at 215 Frontage Road, Arnegard, ND had any permits to be excavating on said property. I informed the President of my City Council that they did not have any permits.

Previously, Ray Close whom has power of attorney over any business affairs dealing with Dakota Services and his mother Muriel Close, had submitted a drawing to the City to attempt to connect the coffee shop on said property to City water and/or sewer. He was informed that he would need to have a professional do plans and specs for said property as what he had submitted would not be enough. A review letter was emailed to the Company on January 30, 2019.

Over the course of the past couple days I have received pictures of the work that has been being done, but yet there has been no one call tickets received by the City and there are no flags showing where utilities are located.

Currently as of this morning there is a open hole located just north of the coffee shop.

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 12th 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

PU-19-113

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1.

Muriel Close
 Dakota Services
 PO Box 921
 Watford City, ND 58854-0921
 Cert. No. 7018 2290 0000 6607 8282
 Case No. PU-19-113

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Muriel Close

- Agent
- Addressee

B. Received by (Printed Name)

Muriel Close

C. Date of Delivery

1/2/2020

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No



9590 9402 5199 9122

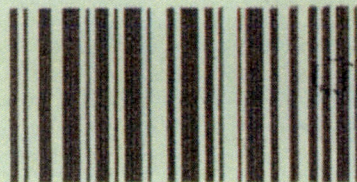
9 PU-19-113 Filed 01/06/2020 Pages: 2
 Return receipt - 7018-2290-0000-6607-8282
 USPS

2. Article Number (Transfer from service label)

7018 2290 0000 6607 8282

- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

USPS TRACKING#



9590 9402 515

United States
Postal Service

9

PU-19-113

Filed: 1/6/2020

Pages: 2

Return receipt - 7018-2290-0000-6607-8282

USPS

Mail
es Paid

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RECEIVED

JAN 6 2020

NORTH DAKOTA
PUBLIC SERVICE COMMISSION

*ND Public Service Commission
Attn: Public Utilities Division
600 E Boulevard Ave. Dept. 408
Bismarck, ND 58505-0480*

