

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Fox Hills Fencing  
Damage Prevention Enforcement**

**Case No. PU-19-215**

**AFFIDAVIT OF SERVICE BY CERTIFIED AND 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 **7th 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 a photocopy of:

- **Order on Consent Agreement**

The envelope was addressed as follows:

John Fossum  
Fox Hills Fencing  
PO Box 391  
Bowman, ND 58623-0391  
**Cert. No. 7019 0700 0000 6174 0327**

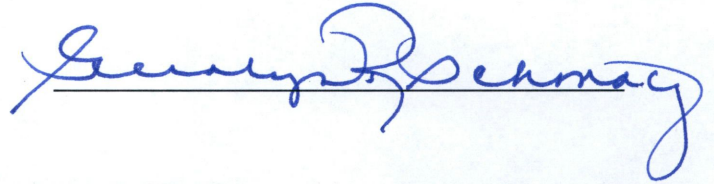
**Geralyn R. Schmaltz** further deposes and says that on the **7th day of October 2019**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

The envelope was addressed as follows:

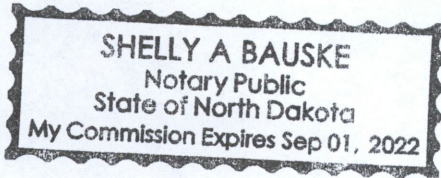
Ryan Farmer  
Kinder Morgan  
611 37<sup>th</sup> Ave SE Bldg 29  
Williston, ND 58801

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

Subscribed and sworn to before me  
this **7th day of October 2019**.



A handwritten signature in blue ink, appearing to read "Shelly A. Bausk", written over a horizontal line.



SEAL



A handwritten signature in blue ink, "Shelly A. Bausk", written over a horizontal line. Below the line, the text "Notary Public" is printed.

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Fox Hills Fencing  
Damage Prevention Enforcement**

**Case No. PU-19-215**

**ORDER ON CONSENT AGREEMENT**

**October 2, 2019**

**Preliminary Statement**

On June 28, 2019, the Commission received a N.D. One-Call Complaint (Complaint) from Kinder Morgan, Inc. (KM) alleging a violation by Fox Hills Fencing (Fox Hills) of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

On July 3, 2019, the Commission sent a letter to Fox Hills enclosing the June 28, 2019 N.D. One-Call Complaint.

On July 10, 2019, Fox Hills filed a response to the June 28, 2019 N.D. One-Call Complaint.

On August 22, 2019, a Consent Agreement, between Public Service Commission Advocacy Staff (Advocacy Staff) and Fox Hills was filed for the resolution of the complaint.

**Discussion**

Fox Hills Fencing is operating under the tradename Fox Hills Fencing with an address of P.O. Box 391, Bowman, N.D. 58623-0391.

KM alleges a violation by Fox Hills of North Dakota Century Code section 49-23-04(1) for failure to contact the notification center and provide an excavation or location notice before beginning an excavation. The Complaint indicates that Fox Hills began an excavation prior to underground facility locate. The Complaint did not identify damage to an underground facility.

North Dakota Century Code section 49-23-04(1) provides 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, Advocacy Staff concluded that Fox Hills failed to provide an excavation or location notice at least 48 hours before beginning an excavation, and Fox Hills admitted to the violation in its June 10, 2019 letter. Fox Hills did not state that the excavation was for an emergency purpose in the same letter. Advocacy Staff concluded that Fox Hills violated North Dakota Century Code section 49-23-04(1).

Fox Hills 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, Fox Hills agrees to be assessed a civil penalty of \$500 with \$250 suspended on condition that Fox Hills commit no further violations of the North Dakota One Call Law (North Dakota Century Code Chapter 49-23) within five years after the date of this Order Adopting Consent Agreement (Order). Fox Hills will make \$250 payable to the North Dakota Public Service Commission within ten business days of service of an Order.

Having considered this matter, the Commission finds the Consent Agreement filed on August 22, 2019, is reasonable and acceptable. Therefore, the Commission issues the following:

### Order

The Commission Orders:

1. The Consent Agreement of Fox Hills and Advocacy Staff, filed August 22, 2019, is approved. A copy of the Consent Agreement is attached to and made a part of the Order.
2. Fox Hills is assessed a civil penalty of \$500 with \$250 suspended on condition that Fox Hills commit no further violations of the North Dakota One Call Law (North Dakota Century Code Chapter 49-23) within five years after the date of the Order.
3. In the event the event the Commission finds Fox Hills violated the North Dakota One Call Law within five years of the date of the Order, Fox Hills shall remit the suspending penalty, within the time ordered by the Commission, in addition to any additional fines or penalties imposed for subsequent violation.
4. If within five years of the date of the Order there is no subsequent violation of the North Dakota One Call Law by Fox Hills, the \$250 suspended penalty shall be withdrawn.

5. Fox Hills shall remit the \$250 civil penalty, payable to the North Dakota Public Service Commission within ten business days of service of the Order.

**PUBLIC SERVICE COMMISSION**

		
<b>Julie Fedorchak</b> Commissioner	<b>Brian Kroshus</b> Chairman	<b>Randy Christmann</b> Commissioner

**BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA**

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<b>PUBLIC SERVICE COMMISSION,</b>	)	
	)	
<b>Complainant,</b>	)	<b>Case No. PU-19-215</b>
	)	
<b>vs.</b>	)	<b>CONSENT AGREEMENT</b>
	)	
<b>Fox Hills Fencing</b>	)	
	)	
<b>Respondent</b>	)	

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**Preliminary Statement**

This Consent Agreement is entered into by and between Fox Hills Fencing (Fox Hills) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket No. PU-19-215.

On June 28, 2019, the Commission received a ND One-Call Complaint from Ryan Farmer with Kinder Morgan. The complaint alleged a violation by Fox Hills 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 Fox Hills violated North Dakota Century Code section 49-23-04(1).

Fox Hills and Public Service Commission Advocacy Staff (Advocacy 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 Advocacy Staff and Fox Hills make the following agreement:

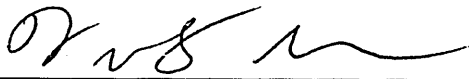
1. Advocacy Staff and Fox Hills agree to settle this matter on the following terms:
  - a. Fox Hills violated N.D.C.C. § 49-23-04(1), by failing to provide an excavation or location notice at least 48 hours before beginning an excavation.
  - b. Fox Hills agrees to be assessed a civil penalty of \$500. Fox Hills agrees to remit \$250 of the \$500, payable to the North Dakota Public Service Commission within ten business days of service of an Order Adopting Consent Agreement (Order). The remaining \$250 civil penalty is suspended on the condition that Fox Hills commits no further violations of the North Dakota One Call Law (North Dakota Century Code Chapter 49-23) within five years of after the date of the Order.
  - c. In the event the Commission finds Fox Hills violated the North Dakota One Call Law within five years of the date of the Order, Fox Hills shall remit the suspended penalty, within the time ordered by the Commission, in addition to any additional fines or penalties imposed for the subsequent violation
  - d. If within five years of the date of the Order there is no subsequent violation of the North Dakota One Call Law by Fox Hills, the penalty is withdrawn.
  - e. If approved by the Commission, Fox Hills expressly waives any further procedural requirements with respect to the issuance of the Consent Agreement and Order, Fox Hills 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.

- f. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this 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 Fox Hills is authorized to act on behalf of Fox Hills and bind Fox Hills for purposes of this Consent Agreement, knows and fully understands the content and effect.

Dated this 21 day of August, 2019

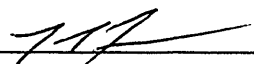
PUBLIC SERVICE COMMISSION  
ADVOCACY STAFF – DAMAGE PREVENTION

By: 

Victor Schock  
Advocacy Staff  
12<sup>th</sup> Floor, Dept. 408  
600 Boulevard Ave.  
Bismarck, ND 58505-0480

Dated this 18 day of August, 2019

Fox Hills Fencing

By:  John Fossum