

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Crosby Creek Consulting, LLP
Damage Prevention Enforcement

Case No. PU-19-300

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 **23rd day of January 2020** 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:

Gene Harris
Crosby Creek Consulting, LLP
11820 10th St NW
Killdeer, ND 58640-9149
Cert. No. 7019 0700 0000 6174 3571

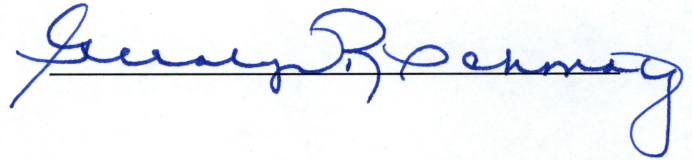
Geralyn R. Schmaltz further deposes and says that on the **23rd day of January 2020**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by first class mail, fully prepaid, securely sealed each containing a photocopy of the same.

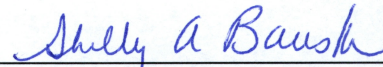
The envelope was addressed as follows:

Ryan Farmer
Kinder Morgan
611 37th St. E Bldg. 29
Williston, ND 58801

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

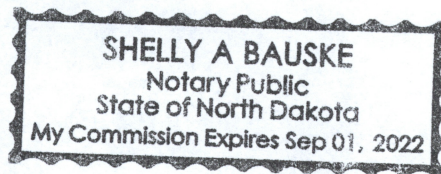
Subscribed and sworn to before me
this **23rd day of January 2020**.





Notary Public

SEAL



STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Crosby Creek Consulting, LLP
Damage Prevention Enforcement**

Case No. PU-19-300

ORDER ON CONSENT AGREEMENT

January 22, 2020

Preliminary Statement

On August 24, 2019, the Commission received a ND One-Call Complaint (Complaint) from Kinder Morgan alleging a violation by Crosby Creek Consulting, LLP (Crosby Creek) of North Dakota Century Code (N.D.C.C.) section 49-23-04(4).

On August 26, 2019, the Commission sent a letter to Crosby Creek enclosing the August 24, 2019 Complaint.

On September 10, 2019, the Commission received Crosby Creek's response to the Complaint.

On December 10, 2019, a Consent Agreement between Public Service Commission Advocacy Staff (Staff) and Crosby Creek was filed for the resolution of the Complaint.

Discussion

Crosby Creek Consulting, LLP is a domestic limited liability partnership with principal address of 11820 10th Street NW, Killdeer, ND 58640.

Kinder Morgan alleges a violation by Crosby Creek of N.D.C.C. 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.

Crosby Creek was excavating near Killdeer, North Dakota, to install culverts. Kinder Morgan reported there was no damage to its underground, 8-inch, high-pressure natural gas pipeline. No customers were affected.

N.D.C.C. 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 violation, Staff concluded Crosby Creek violated N.D.C.C. 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.

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

Crosby Creek agrees to be assessed a civil penalty of \$500. Crosby Creek agrees to remit \$250 of the \$500, payable to the North Dakota Public Service Commission within ten business days of service of an Order. The remaining \$250 civil penalty is suspended on the condition that Crosby Creek commits no further violation of N.D.C.C. chapter 49-23 within five years of the date of the Order.

Having considered this matter, the Commission finds the Consent Agreement filed on December 10, 2019, is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Consent Agreement of Crosby Creek and Staff, filed December 10, 2019, is approved. A copy of the Consent Agreement is attached to and made a part of this Order.
2. Crosby Creek is assessed a civil penalty of \$500.
3. Crosby Creek shall remit \$250 civil penalty, payable to the North Dakota Public Service Commission within ten business days of service of this Order. The remaining \$250 civil penalty is suspended on the condition that Crosby Creek commits no further violation of North Dakota Century Code chapter 49-23 within five years of the date of this Order.
4. In the event the Commission finds Crosby Creek violated North Dakota Century Code chapter 49-23 within five years of the date of this Order, Crosby Creek shall remit

the suspended portion of the penalty, \$250, within the time ordered by the Commission, and in addition, any penalties assessed for 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-19-300
)	
vs.)	
)	CONSENT AGREEMENT
Crosby Creek Consulting, LLP,)	
)	
Respondent .)	

Preliminary Statement

This Consent Agreement is entered into by and between Crosby Creek Consulting, LLP. (Crosby) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket No. PU-19-300.

On August 24, 2019, the Commission received a ND One-Call Complaint from Kinder Morgan. The complaint alleged a violation by Crosby 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 (N.D.C.C.) 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 Crosby violated N.D.C.C. 49-23-04(4).

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

1. Crosby violated N.D.C.C. 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. Crosby agrees to be assessed a civil penalty of \$500. Crosby 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 Crosby commits no further violation of N.D.C.C. chapter 49-23 within five years of the date of the Order.
3. Crosby 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, Crosby 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 Crosby and bind Crosby for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 10th day of December, 2019

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By:  _____

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

Dated this 2 day of Dec., 2019

Crosby Creek Consulting, LLP

By: Gene Harris - Partner

{insert name and title}