

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Northwest Grading, Inc.
Damage Prevention Enforcement

Case No. PU-19-312

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 **19th day of November 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:

Bill Krick
President
Northwest Grading, Inc.
1875 North Lakewood Drive Suite 201
Coeur d' Alene, ID 838-4928
Cert. No. 7019 2280 0000 0692 7641

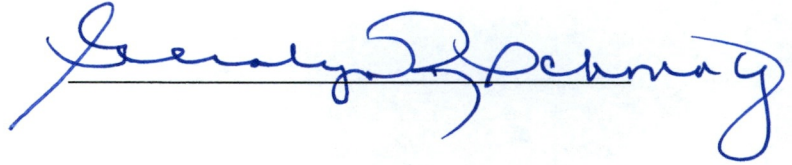
Geralyn R. Schmaltz further deposes and says that on the **19th day of November 2020**, she sent an electronic message to **one** addressee, each including an electronic copy in portable document format of the same document.

The electronic mail was addressed as follows:

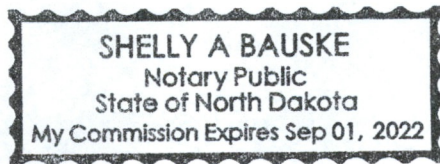
Kris Nielsen
ONEOK Rockies Midstream, L.L.C.
Kristopher.Nielsen@oneok.com

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

Subscribed and sworn to before me
this **19th day of November 2020**.



A handwritten signature in blue ink, appearing to read "Cecily D. Schmay", written over a horizontal line.



SEAL



A handwritten signature in blue ink, reading "Shelly A Bauske", written over a horizontal line. Below the line, the words "Notary Public" are printed.

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ORDER ON CONSENT AGREEMENT

November 18, 2020

Preliminary Statement

On September 10, 2019, the Commission received a ND One Call Complaint (Complaint) from Kris Nielson with ONEOK Rockies Midstream, L.L.C. (ONEOK) alleging a violation by Northwest Grading, Inc. (Northwest) of North Dakota Century Code (NDCC) section 49-23-04(1) for failure to provide an excavation notice to the North Dakota One Call (NDOC) Notification Center at least forty-eight hours prior to an excavation.

On September 12, 2019, the Commission sent a letter to Northwest enclosing the September 10, 2019 Complaint, requesting a response by September 26, 2019.

On September 25, 2019, Northwest filed a response to the Complaint.

On October 28, 2019, ONEOK filed a response to Northwest's September 25, 2019 response.

On August 17, 2020, Public Service Commission Advocacy Staff (Advocacy Staff) filed a formal complaint, requesting that the Commission find Northwest in violation of NDCC section 49-23-04(1).

On September 23, 2020, the Commission found the Complaint filed on September 10, 2019, states a prima facie case and attempted to serve Northwest with the Complaint.

On October 30, 2020, a Consent Agreement between Advocacy Staff and Northwest was filed for the resolution of the Complaint.

Discussion

Northwest Grading, Inc. is a foreign corporation with offices located at 6960 N. 4th St., Dalton Gardens, ID 83815, and a registered agent address of Search Company of North Dakota, LLC, 1709 N. 19th St., Suite 3, Bismarck, ND 58501.

Advocacy Staff alleges a violation by Northwest of NDCC section 49-23-04(1) for failing to provide an excavation notice to the NDOC Notification Center at least forty-eight hours prior to its excavation.

On August 17, 2019, Northwest personnel began an excavation while installing a waterline. As a result of this excavation, damage was caused by Northwest's equipment to ONEOK's 14-inch poly natural gas gathering line. The cost to repair the pipeline was approximately \$12,960, and the value of the natural gas lost was approximately \$90,000.

NDCC section 49-23-04(1) provides that "[e]xcept 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."

The excavation was not being made in a time of emergency under NDCC section 49-23-04(1), allowing the excavator to give notification after the start of the excavation.

Northwest violated NDCC section 49-23-04(1) by failing to provide an excavation notice to the NDOC Notification Center at least forty-eight hours prior to its excavation.

Northwest 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, Northwest agrees to be assessed a civil penalty of \$5,000 payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting the Consent Agreement (Order).

Having considered this matter, the Commission finds the Consent Agreement filed on October 30, 2020 is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Consent Agreement of Northwest Grading, Inc. and Advocacy Staff, filed October 30, 2020, is approved. A copy of the Consent Agreement is attached to and made a part of this Order.
2. Northwest Grading, Inc. is assessed a civil penalty of \$5,000.

3. Northwest Grading, Inc. shall remit the \$5,000 civil penalty, payable to the North Dakota Public Service Commission within ten business days of service of this Order.

PUBLIC SERVICE COMMISSION


Julie Fedorchak
Commissioner


Brian Kroshus
Chairman


Randy Christmann
Commissioner

Having investigated the alleged violation, Staff believes that Northwest violated N.D.C.C. 49-23-04(1).

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

1. Northwest agrees to be assessed a civil penalty of \$5,000, payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving the Consent Agreement. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violations alleged in the Cases.
2. Northwest consents to the filing of the Consent Agreement and an Order in the Cases 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, Northwest understands and agrees in the Cases 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.

3. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Agreement and Order.
4. 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.
5. The undersigned is authorized to act on behalf of Northwest and bind Northwest for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 30th day of October, 2020

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 15th day of October, 2020

Northwest Grading, Inc.

By: 

Bill Krick – President