

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
NC3, LLC
Damage Prevention Enforcement**

Case No. PU-20-96

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 **18th day of February 2021**, she deposited in the United States Mail, at Bismarck, North Dakota, **two** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

- **Order and Notice of Default**

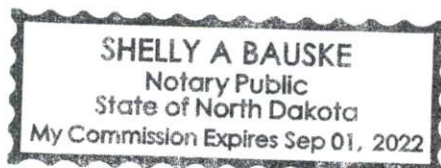
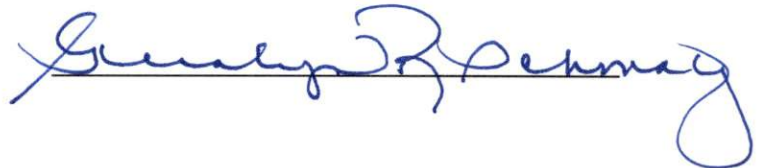
The envelopes were addressed as follows:

NC3, LLC
44926 State Hwy 92
Clearbrook, MN 56634
Cert. No. 7020 1290 0001 6150 3496

C T Corporation
Registered Agent for NC3, LLC
120 West Sweet Avenue
Bismarck, ND 58504
Cert. No. 7020 1290 0001 6150 3502

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

Subscribed and sworn to before me
this **18th day of February 2021**.





Notary Public

SEAL

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
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ORDER AND NOTICE OF DEFAULT

February 17, 2021

Preliminary Statement

On March 2, 2020, the Commission received a ND One-Call Complaint from Walsh Water Users, Inc. (Walsh), alleging a violation by NC3, LLC (NC3) of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

On March 12, 2020, Commission staff sent a letter to NC3 enclosing the March 2, 2020 ND One-Call Complaint and requested a response by March 26, 2020.

On August 24, 2020, Walsh filed additional details about the March 2, 2020 ND One-Call Complaint.

On August 31, 2020, Commission Advocacy Staff (Advocacy Staff) filed a Complaint alleging NC3 violated North Dakota Century Code (NDCC) section 49-23-04(1) by failing to provide an excavation or location notice to the North Dakota One-Call (NDOC) notification center at least forty-eight hours before beginning an excavation, requesting the Commission enter an Order of Default against NC3 pursuant to NDCC section 28-32-21(e) and impose a penalty.

On September 16, 2020, the Commission received a response regarding the Complaint from NC3.

On September 23, 2020, the Commission found the Complaint filed on March 2, 2020, states a prima facie case, and service of the Complaint was initiated on September 24, 2020.

On September 25, 2020, a return receipt was signed by NC3's registered agent as evidenced by the return receipt on file with the Commission.

On January 21, 2021, Advocacy Staff filed and served a Motion and Notice of Motion for Order of Default.

Discussion and Statement of Grounds for Default

NC3, LLC is a foreign corporation with principal offices located at 44926 State 92, Clearbrook, MN 56634-4210, and a registered agent address of CT Corporation System, 120 W Sweet Ave, Bismarck, ND 58504.

On September 30, 2019, NC3 personnel began an excavation while performing a fiber optic line installation in the northeast corner of the intersection of US Highway 81 and 71st ST NE, North Dakota, which was outside the excavation area NC3 submitted in its NDOC ticket. As a result of the excavation, damage to Walsh's water line was sustained. Walsh alleges \$2,133.26 of damages was caused from the excavation.

NC3 violated North Dakota Century Code section 49-23-04(1) by failing to provide an excavation or location notice to the NDOC Notification Center at least forty-eight hours before beginning its excavation.

North Dakota Century Code 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 facts before the Commission indicate that NC3 is in default for failing to file an answer within 20 days after service of the Complaint.

NC3's failure to file an answer to the Complaint constitutes grounds for default under North Dakota Century Code Chapter 28-32 and North Dakota Administrative Code Chapter 69-02-02.

The Commission may impose a civil penalty up to \$25,000, but at least \$1,000, or any other relief that the Commission finds just and proper.

This Order and Notice of Default constitutes written Notice of Default and a statement of the grounds for default.

The Commission issues the following:

Order and Notice of Default

The Commission Orders:

1. NC3, LLC is in default under North Dakota Century Code Chapter 28-32 and North Dakota Administrative Code Chapter 69-02-02 for failing to file an answer to the Complaint within twenty days after service of the Complaint.

2. NC3, LLC is in violation of North Dakota Century Code Chapter section 49-23-04(1) by failing to provide an excavation notice to the North Dakota One-Call Notification Center at least forty-eight hours before beginning its excavation.
3. NC3, LLC is assessed a civil penalty of \$1000.
4. NC3, LLC shall remit the \$1000 civil penalty, payable to the North Dakota Public Service Commission, within ten business days upon service of this Order and Notice of Default.
5. This Order and Notice of Default constitutes written Notice of Default and a statement of the grounds for default.
6. Under North Dakota Century Code Section 28-32-30(2), NC3, LLC has seven days after service of this Order and Notice of Default to file a written motion requesting that the default order be vacated. Unless NC3, LLC, within seven days after service of this Order and Notice of Default, files a written motion requesting that the default order be vacated, this Order and Notice of Default will be the final determination of this matter.

PUBLIC SERVICE COMMISSION



Randy Christmann
Commissioner



Julie Fedorchak
Chair



Brian Kroshus
Commissioner