

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

**Public Service Commission**  
**SKS Construction LLP**  
**Damage Prevention Enforcement**

**Case No. PU-20-201**

**ORDER ON CONSENT AGREEMENT**

**December 16, 2020**

**Preliminary Statement**

On May 6, 2020, the Commission received a ND One-Call Complaint (Complaint) from David Willgohs of Fargo, ND, alleging a violation by SKS Construction, LLP (SKS) of North Dakota Century Code (NDCC) chapter 49-23: One-Call Excavation Notice System.

On May 7, 2020, the Commission sent a letter to SKS enclosing the May 6, 2020 Complaint, requesting a response by May 25, 2020.

On May 23, 2020, SKS filed a response to the Complaint.

On November 20, 2020, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy) and SKS was filed for the resolution of the Complaint.

**Discussion**

SKS Construction, LLP is a domestic limited liability partnership with a principal address of 1517 55<sup>th</sup> Avenue South, Fargo, ND, 58104.

On or around April 30, 2020, SKS personnel began an excavation while removing a portion of a sidewalk. The Complaint did not indicate damage to an underground facility.

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.

Advocacy Staff concluded that SKS violated NDCC section 49-23-04(1) by failing to provide an excavation or location notice to the ND One-Call Notification Center at least 48 hours before beginning an excavation.

SKS 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, SKS agrees to be assessed a civil penalty of \$500, with \$250 suspended on condition that SKS commit no further violations of the North Dakota One-Call Law (North Dakota Century Code chapter 49-23) within five years of the date of this Order. SKS will make \$250 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 November 20, 2020 Consent Agreement is reasonable and acceptable. Therefore, the Commission issues the following:

### **Order**

The Commission Orders:

1. The Consent Agreement, filed on November 20, 2020, between SKS Construction, LLP and Advocacy Staff is approved. A copy of the Consent Agreement is attached to and made a part of this Order.
2. SKS Construction, LLP is assessed a civil penalty of \$500.
3. SKS Construction, LLP shall remit the \$250 civil penalty, payable to the North Dakota Public Service Commission, within ten business days of service of the Order. The remaining \$250 civil penalty is suspended on condition that SKS commit no further violation of North Dakota Century Code chapter 49-23 within five years of the date of the Order.
4. In the event the Commission finds SKS violated North Dakota One-Call Law within five years of the date of the Order, SKS shall remit the suspended portion of the penalty,

\$250, within the time ordered by the Commission and any additional fines or penalties imposed for subsequent violation.

**PUBLIC SERVICE COMMISSION**

  
Julie Fedorchak  
Commissioner

  
Brian Kroshus  
Chairman

  
Randy Christmann  
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-20-201</b>
	)	
<b>vs.</b>	)	<b>CONSENT AGREEMENT</b>
	)	
<b>SKS Construction LLP</b>	)	
	)	
<b>Respondent</b>	)	

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**Preliminary Statement**

On May 6, 2020, the Commission received a ND One-Call Complaint from David Willgohs of Fargo, ND. The complaint alleged a violation by SKS Construction LLP (SKS) of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

North Dakota Century Code section 49-23-04(1) states that 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.

As a result of its investigation, Staff concluded that SKS violated North Dakota Century Code section 49-23-04(1) by failing to provide an excavation or location notice at least 48 hours before beginning any excavation.

SKS 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

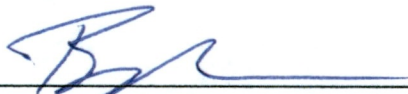
that entry of this Consent Agreement is the most appropriate means of resolving this administrative action, the Advocacy Staff and Respondent make the following agreement:

1. Advocacy Staff and SKS agree to settle this matter on the following terms:
  - a. SKS violated N.D.C.C. § 49-23-04(1), by failing to provide an excavation or location notice at least 48 hours before beginning any excavation.
  - b. SKS agrees to be assessed a civil penalty of \$500. SKS 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 SKS commits no further violation of North Dakota Century Code 49-23 within five years of the date of the Order
  - c. In the event the Commission finds SKS violated the North Dakota One Call Law within five years of the date of the Order, SKS shall remit the suspended portion of the 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 SKS, the remaining \$250 penalty is withdrawn.
  - e. If approved by the Commission, SKS expressly waives any further procedural requirements with respect to the issuance of the Consent Agreement and Order, SKS 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 SKS Electric, Inc. is authorized to act on behalf of SKS Electric, Inc. and bind SKS Electric, Inc. for purposes of this Consent Agreement, knows and fully understands the content and effect.

Dated this 20<sup>th</sup> day of November, 2020

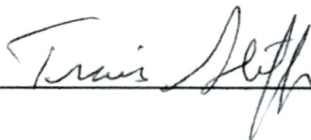
PUBLIC SERVICE COMMISSION  
ADVOCACY STAFF – DAMAGE PREVENTION

By:  \_\_\_\_\_

Brian Johnson  
Advocacy Counsel  
12<sup>th</sup> Floor, Dept. 408  
600 Boulevard Ave.  
Bismarck, ND 58505-0480

Dated this 12<sup>th</sup> day of November, 2020

SKS Construction LLP

By:  \_\_\_\_\_

Title: Partner \_\_\_\_\_