

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

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<b>PUBLIC SERVICE COMMISSION,</b>	)	
	)	
<b>Complainant,</b>	)	<b>Case No. PU-20-202</b>
	)	
<b>vs.</b>	)	<b>CONSENT AGREEMENT</b>
	)	
<b>Damian Dvorak</b>	)	
	)	
<b>Respondent</b>	)	

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**Preliminary Statement**

On May 6, 2020, the Commission received a ND One-Call Complaint from Mitchell Sanderson of Park River, ND. The complaint alleged a violation by Damian Dvorak (Mr. Dvorak) 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 Mr. Dvorak violated North Dakota Century Code section 49-23-04(1) by failing to provide an excavation or location notice before beginning any excavation.

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 Dvorak, the penalty is withdrawn.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

Dated this 29<sup>th</sup> day of July, 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 20 day of July, 2020

Damian Dvorak

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

