

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Damian Dvorak
Damage Prevention Enforcement

Case No. PU-20-202

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 **28th day of August 2020**, 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 on Consent Agreement**

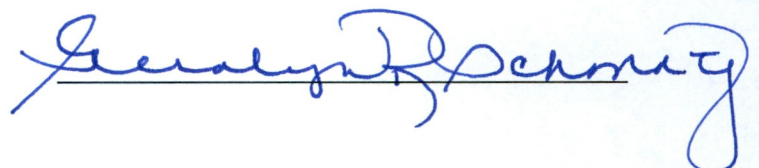
The envelopes were addressed as follows:

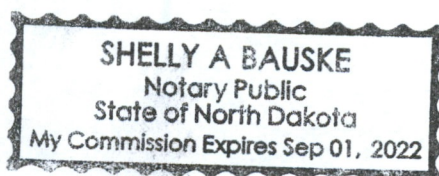
Mitchell Sanderson
214 Sandwood Circle
Park River, ND 58270
Cert. No. 7019 2280 0000 0693 0818

Damian Dvorak
212 Sandwood Circle
Park River, ND 58270
Cert. No. 7019 2280 0000 0693 0825

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

Subscribed and sworn to before me
this **28th day of August 2020**.






Notary Public

SEAL

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Damian Dvorak
Damage Prevention Enforcement

Case No. PU-20-202

ORDER ON CONSENT AGREEMENT

August 26, 2020

Preliminary Statement

On May 6, 2020, the Commission received a ND One-Call Complaint from Mitchell Sanderson alleging a violation by Damian Dvorak of North Dakota Century Code (N.D.C.C.) section 49-23-04(1).

On May 7, 2020, Commission Advocacy Staff (Staff) sent a letter to Mr. Dvorak enclosing the May 6, 2020 ND One-Call Complaint.

On May 12, 2020, and May 19, 2020, Mr. Sanderson emailed the Commission supplemental information regarding the May 6, 2020 Complaint.

On May 18, 2020, Mr. Dvorak sent a response to the May 6, 2020 ND One-Call Complaint.

On July 29, 2020, a Consent Agreement, between Staff and Mr. Dvorak was filed for the resolution of the ND One-Call Complaint.

Discussion

Mr. Dvorak is the respondent whose address is 212 Sandwood Circle, Park River, ND 58270.

Mr. Sanderson alleges a violation by Mr. Dvorak of N.D.C.C. section 49-23-04(1) for failure to provide an excavation or location notice before beginning an excavation.

On May 3, 2020, Mr. Dvorak began an excavation without a locate notice. No damage to an underground facility occurred.

N.D.C.C. 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.

Having investigated the alleged violation, Staff concluded that Mr. Dvorak violated N.D.C.C. section 49-23-04(1).

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

Under the Consent Agreement, Mr. Dvorak agrees to be assessed a civil penalty of \$500. The penalty is suspended on 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.

Having considered this matter, the Commission finds the Consent Agreement filed on July 29, 2020, is reasonable and acceptable. Therefore, the Commission issues the following:


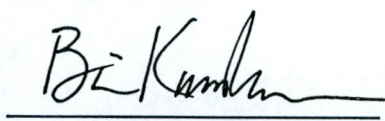
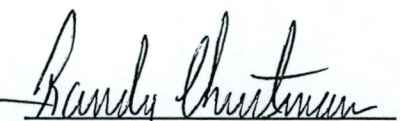
Order

The Commission Orders:

1. The Consent Agreement of Mr. Dvorak and Commission Advocacy Staff, filed on July 29, 2020, is approved. A copy of the Consent Agreement is attached to and made a part of the Order.
2. Mr. Dvorak is assessed a civil penalty of \$500. The \$500 civil penalty is suspended on condition that Mr. Dvorak commits no further violation of North Dakota Century Code chapter 49-23 within five years of the date of the Order.
3. In the event the Commission finds Mr. Dvorak violated North Dakota One-Call Law within five years of the date of this Order, Mr. Dvorak shall remit the penalty, \$500, within the time ordered by the Commission, and in addition, any additional fees or penalties

imposed for subsequent violation. If within five years of the date of the Order there is no subsequent violation of North Dakota Century Code chapter 49-23 by Mr. Dvorak, the penalty is withdrawn.

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-20-202
)	
vs.)	CONSENT AGREEMENT
)	
Damian Dvorak)	
)	
Respondent)	

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 29th day of July, 2020

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By: 

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

Dated this 20 day of July, 2020

Damian Dvorak

By: 