

## **-Info-Public Service Commission**

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**From:** Schock, Victor F.  
**Sent:** Thursday, July 23, 2020 8:31 AM  
**To:** -Info-Public Service Commission  
**Subject:** FW: PSC Case No. PU-20-332  
**Attachments:** Answer to ND One-Call Complaint.pdf; Answer to ND One-Call Complaint (AOS).pdf

Please file as a response in the above captioned case.

Thanks,

Victor Schock

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**From:** Beth Ripplinger <briplinger@bkmpc.com>  
**Sent:** Wednesday, July 22, 2020 5:20 PM  
**To:** Schock, Victor F. <vschock@nd.gov>  
**Cc:** David Schweigert <dshweigert@bkmpc.com>; Cody Nichols <CNichols@bkmpc.com>; Coal Creek Construction <ccreek@westriv.com>  
**Subject:** PSC Case No. PU-20-332

**CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

*Mr. Schock,*

*Please find attached our clients answer to the ND One-Call Complaint in reference the above-mentioned PSC Case No.*

*This was also sent to you via US Mail today.*

*Should you have any questions, please feel free to contact us.*

*Thank you,*

**Beth E Ripplinger, Legal Assistant**

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3 PU-20-332 Filed 07/22/2020 Pages: 8  
Response to North Dakota One-Call Complaint  
Coal Creek Construction, Inc.  
Beth Ripplinger, SKM Law Firm

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NORTH DAKOTA PUBLIC SERVICE COMMISSION

Southwest Water Authority,	)	PSC Case No. PU-20-332
	)	
Complainant,	)	
	)	
vs.	)	<b>ANSWER TO ND</b>
	)	<b>ONE-CALL COMPLAINT</b>
Coal Creek Construction, Inc.	)	
	)	
Respondent.	)	

For its Answer to the ND One-Call Complaint of Southwest Water Authority ("SWA") Coal Creek Construction, LLC ("CCC") provides as follows:

1. Generally denies each and every allegation of SWA's complaint except as may be admitted, or otherwise explained hereinafter.

2. For the PSC's information, SWA has filed a lawsuit in North Dakota District Court regarding the same allegations contained in the attached Memorandum. SWA's intention in filing this Complaint appears to be motivated by CCC's Refusal to resolve its dispute with SWA and appears to be solely retaliatory in nature and done for the purpose of harassment and to gain an advantage in the North Dakota Litigation. Since litigation is already pending regarding this same issue, the Complaint must be dismissed. SWA chose already the forum it felt should address the allegations in the Complaint.

3. The relevant facts of this incident are as follows: On or around August 23, 2019 Coal Creek Construction, Inc. ("CCC") made a request with North Dakota One Call ("NDOC") to install an electrical primary line on Eugene Sailer's farm located at approximately 240 county Road 13, Zap, North Dakota (hereinafter the "jobsite"). CCC was given ticket #19112259 from NDOC for this job. NDOC then notified Southwest Water

Authority ("SWA") to mark the Southwest Pipeline Project (hereinafter the "waterline") lines on the jobsite.

On or about August 27, 2019, CCC was informed that SWA had completed marking the waterlines at the jobsite. When CCC arrived at the jobsite, there were blue pin flags placed in the ground representing the location of the waterlines. Although the area marked by SWA would have been the preferred route, CCC moved its original boring route further away from the blue pin flags for extra precaution. This planned boring route ran parallel to SWA's blue pin markers. At no point did CCC approach closer than 10 feet from the SWA's waterline markings with its boring operations. There was no need for CCC to pothole its boring route to determine the exact location of the waterline because the waterline was not supposed to be anywhere near or within 2 feet of SWA's markings. There was approximately 10 to 15 feet between SWA's markers and CCC's route. CCC had no reason to believe that its planned route interfered with the waterline, as marked by SWA. SWA never informed CCC it had any concern or difficulties in locating its water lines.

On September 17, 2019, while boring 10 to 15 feet from SWA's blue pin markers, a resident on the jobsite informed CCC that the water inside the house did not work. CCC immediately ceased boring operations and contacted SWA. Shortly thereafter, it was discovered that CCC hit an unmarked waterline that was supposed to have been marked by SWA. SWA's marked waterline was over 10 feet away from where the actual waterline was buried. Having hit the line, CCC stopped all operations. Since ticket #19112259 was set to expire that day and CCC knew it would not be able to complete the job, CCC called NDOC to update ticket #19112259 and was given ticket # 19128177.

SWA's complaint alleges that "CCC is at fault because [CCC] never asked for SWA assistance in finding the waterline and chose to risk direction drilling without knowing exactly where the waterline was." There are two issues with this claim:

- A. SWA's assistance to find and mark the waterline was requested through the NDOC. SWA then went to the jobsite and placed blue pin flags to mark the waterline location. This is evidenced through the NDOC records pertaining to this CCC made a call to Nd One-Call. SWA came to the scene and marked its line. It did not advise CCC that it was having any difficulty locating the water line. After SWA marked its line and having not been told that SWA had any difficulties locating the water line CCC bored chose a route 10 to 15 feet from SWA's pins. Since SWA never informed CCC of any concerns and CCC did not intend or did it bore within 2 feet of SWA's pins, there was no need to locate the line pursuant to 49-23-04 (6)(b) and (c). (It also should be noted whether where this line was hit was put in prior to August 1, 2013 has not been established). SWA's flagging was accurate is a main concern in this case. Excavating companies like CCC rely on the SWA's markings to safely excavate around utility lines.
- B. Even if N.D.C.C. 49-23-04(6)(c), applies an operator has a duty to locate the underground facilities as accurately as possible when the exact location cannot be established. If excavation operations approach the estimated location, then the excavator has a duty to locate the underground facility. Even if SWA could not find the exact location, SWA had duty to mark the waterline as accurately as possible. Boring 10 to 15 feet away from SWA's markings is not approach SWA's line. SWA's water line markings being more than 10 feet away from the actual waterline is unreasonable. In addition, CCC's boring operations were running parallel to SWA's waterline markings; CCC's boring operations never approached or came close to those markings. Therefore, CCC never had a duty to locate the exact location of the waterline. SWA's failure to accurately mark the waterline is not a moot point as it is a main concern for causation of this event.

In summary, SWA failed to properly locate the approximate location of the waterlines on the jobsite. It is absurd and unreasonable to hold CCC responsible for SWA's complete failure to mark the approximate location of the waterlines. In fact, to hold CCC responsible for this event would render the NDOC system meaningless because the purpose of the NDOC is to create a system where the utility companies mark the utility lines to allow contractors like CCC to safely excavate near/around the utility lines. SWA simply did not

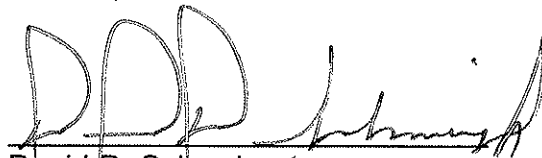
mark the waterlines with any accuracy. CCC never had a duty pothole its boring route because the boring route was never intended to approach the marked waterline. CCC's reliance on SWA's inaccurate waterline markings is what ultimately caused this event.

SWA's conduct as described herein violated Chapter 49-23 of the North Dakota Century Code

DATED this 22nd day of June, 2020.

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NORTH DAKOTA PUBLIC SERVICE COMMISSION

Southwest Water Authority,	)	PSC Case No. PU-20-332
	)	
Complainant,	)	
	)	
vs.	)	<b>AFFIDAVIT OF SERVICE</b>
	)	
Coal Creek Construction, Inc.	)	
	)	
Respondant.	)	

[1] Beth E. Ripplinger, being first duly sworn on oath, deposes and says that she is a legal assistant in the office of Schweigert, Klemin & McBride, P.C., Attorneys at Law, 116 North 2<sup>nd</sup> Street, P.O. Box 955, Bismarck, North Dakota, 58502-0955; that on the 22<sup>nd</sup> day of July, 2020, she served the following:

- 1. ANSWER OF COAL CREEK CONSTRUCTION LLC; and**
- 2. AFFIDAVIT OF SERVICE.**

on the following person by placing copies thereof in an envelope properly addressed as follows:

Victor Schock  
ND Public Service Commission  
600 E Boulevard Ave, Dept 408  
Bismarck, ND 58505-0480  
vschock@nd.gov

which address is the last address of said parties known to her, and the envelope with postage prepaid was deposited by her in the United States Mail at Bismarck, North Dakota, for delivery by the United States Post Office Department as directed by said envelope.

*Beth E. Ripplinger*  
Beth E. Ripplinger

Subscribed and sworn to before me this 22nd day of July, 2020.

SHANNON BARTH  
Notary Public  
State of North Dakota  
My Commission Expires November 25, 2021

*Shannon Barth*  
Notary Public  
State of North Dakota