

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
BEK Consulting LLC
Damage Prevention Enforcement

Case No. PU-20-343

Public Service Commission
BEK Consulting LLC
Damage Prevention Enforcement

Case No. PU-21-241

Public Service Commission
BEK Consulting LLC
Damage Prevention Enforcement

Case No. PU-21-305

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 **24th day of September 2021** she deposited in the United States Mail at Bismarck, North Dakota, **three** 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:

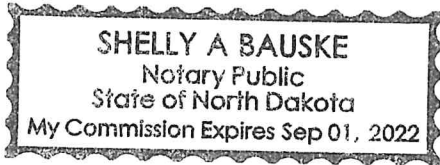
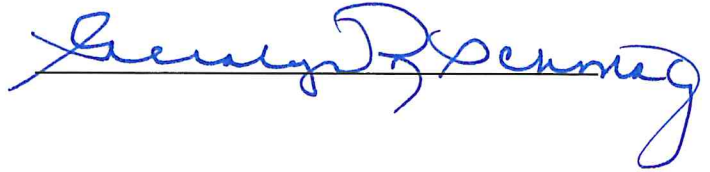
Keith Reiss
BEK Consulting, LLC
913 38th Avenue East
Dickinson, ND 58601
Cert. No. 7020 2450 0000 1344 2192

Kevin Busscher
Montana-Dakota Utilities Co.
1133 W Broadway
Dickinson, ND 58601
Cert. No. 7020 2450 0000 1344 2208

Laura Kraft
Montana-Dakota Utilities Co.
107 10th St. SW
Watford City, ND 58854
Cert. No. 7020 1810 0000 0893 9592

Each address shown is the respective addressee's last reasonably ascertainable post office mail address.

Subscribed and sworn to before me
this **24th day of September 2021**.



Notary Public

SEAL

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
BEK Consulting, LLC
Damage Prevention Enforcement

Case No. PU-20-343

Public Service Commission
BEK Consulting, LLC
Damage Prevention Enforcement

Case No. PU-21-241

Public Service Commission
BEK Consulting, LLC
Damage Prevention Enforcement

Case No. PU-21-305

ORDER ON CONSENT AGREEMENT

September 22, 2021

Preliminary Statement

Case No. PU-20-343

On July 17, 2020, the Commission received a ND One-Call Complaint from Montana-Dakota Utilities Co. alleging a violation by BEK Consulting, LLC of North Dakota Century Code (N.D.C.C.) section 49-23: One-Call Excavation Notice System Case number PU-20-343. (Complaint)

On July 17, 2020, the Commission sent a letter to BEK Consulting, LLC enclosing the July 17, 2020 Complaint requesting a response by July 31, 2020.

On July 30, 2020, BEK Consulting, LLC filed a response addressing the Complaint.

Case No. PU-21-241

On June 25, 2021, the Commission received a ND One-Call Complaint from Montana-Dakota Utilities Co. alleging a violation by BEK Consulting, LLC of North Dakota Century Code (N.D.C.C.) section 49-23: One-Call Excavation Notice System Case number PU-21-241. (Complaint)

On July 13, 2021, the Commission sent a letter to BEK Consulting, LLC enclosing the June 25, 2021 Complaint requesting a response by July 27, 2021.

On July 27, 2021, BEK Consulting, LLC filed a response addressing the Complaint.

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PU-21-305 Filed: 9/22/2021 Pages: 11
Order on Consent Agreement

Public Service Commission

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PU-20-343 Filed: 9/22/2021 Pages: 11
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Public Service Commission

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PU-21-241 Filed: 9/22/2021 Pages: 11
Order on Consent Agreement

Public Service Commission

Case No. PU-21-305

On July 1, 2021, the Commission received a ND One-Call Complaint from Montana-Dakota Utilities Co. alleging a violation by BEK Consulting, LLC of North Dakota Century Code (N.D.C.C.) section 49-23: One-Call Excavation Notice System Case numbers PU-20-305. (Complaint)

On July 13, 2021, the Commission sent a letter to BEK Consulting, LLC enclosing the July 1, 2021 Complaint requesting a response by July 27, 2021.

On July 27, 2021, BEK Consulting, LLC filed a response addressing the Complaint.

Case Nos. PU-20-343, PU-21-241 and PU-21-305

On August 25, 2021, a Consent Agreement, between Public Service Commission Advocacy Staff (Advocacy Staff) and BEK Consulting, LLC was filed for the resolution of the Complaints.

Discussion

BEK Consulting, LLC is a domestic limited liability company with a principal address of 913 38th Ave E, Dickinson, ND, 58602.

Case No. PU-20-343

On July 2, 2020, Bek Consulting, LLC personnel provided an excavation notice to the North Dakota One-Call Notification Center (NDOC). The NDOC assigned locate ticket number 20080473 to the excavation notice. The work was for installation of a water line at 1219 McKenzie Street, New England, ND. The expiration date for the ticket was July 29, 2020.

On July 7, 2020, BEK Consulting, LLC began an excavation as defined in the North Dakota Century Code (NDCC) section 49-23-01(7) at 1219 McKenzie Street, New England, ND. As a result of the excavation damage to a Montana-Dakota Utilities Co. 2" natural gas line was sustained. The damages estimate was \$1219.33. Five Montana-Dakota Utilities Co. natural gas customers were affected by the damage.

The complaint alleges that BEK Consulting, LLC violated NDCC section 49-23-05(5) for failure to conduct an excavation in a careful and prudent manner.

NDCC section 49-23-05(5) provides that to avoid damage and to minimize interference a ticket holder shall "Conduct the excavation in a careful and prudent manner."

Case No. PU-21-241

On June 1, 2021, Bek Consulting, LLC personnel provided an excavation notice to the NDOC. The NDOC assigned locate ticket number 21053859 to the excavation notice. The work was for installation of a storm sewer in Alexander, ND. The expiration date for the ticket was June 25, 2021.

On June 24, 2021, BEK Consulting, LLC began two excavations as defined in the North Dakota Century Code (NDCC) section 49-23-01(7) at Alexander, ND. As a result of the excavations damage to a Montana Dakota Utilities Co. 3/4-inch natural gas line at 806 Bruegger St. was sustained. Also, damage to a 1-inch natural gas line at 820 Bruegger St. was sustained. The damages estimate was \$2441. Two Montana-Dakota Utilities Co. natural gas customers were affected by the damage.

The complaint alleges that BEK Consulting, LLC violated NDCC section 49-23-05(5) for failure to conduct an excavation in a careful and prudent manner and NDCC section 49-23-06-(1)(a) for failure by BEK Consulting, LLC to notify the operator, Montana-Dakota Utilities Co., as soon as reasonably possible of damage to an underground facility.

NDCC section 49-23-05(5) provides that to avoid damage and to minimize interference a ticket holder shall "Conduct the excavation in a careful and prudent manner."

NDCC section 49-23-06(1)(a) provides that "If any damage occurs to an underground facility or its protective covering, the excavator shall notify the operator as soon as reasonably possible."

Case No. PU-21-305

On June 24, 2021, Bek Consulting, LLC personnel provided an excavation notice to the NDOC. The NDOC assigned locate ticket number 21071402 to the excavation notice. The work was for installation of a storm sewer at 112 Manning Ave, Alexander, ND. The expiration date for the ticket was July 20, 2021.

On June 29, 2021, BEK Consulting, LLC began an excavation as defined in the North Dakota Century Code (NDCC) section 49-23-01(7) at 112 Manning Ave., Alexander, ND. As a result of the excavation damage to a Montana Dakota Utilities Co. 3/4-inch natural gas line was sustained. The damages estimate was \$3000. Three Montana-Dakota Utilities Co. natural gas customers were affected by the damage.

The complaint alleges that BEK Consulting, LLC violated NDCC section 49-23-05(5) for failure to conduct an excavation in a careful and prudent manner.

NDCC section 49-23-05(5) provides that to avoid damage and to minimize interference a ticket holder shall "Conduct the excavation in a careful and prudent manner."

Case Nos. PU-20-343, PU-21-241 and PU-21-305

Having investigated the alleged violations, Staff believes that BEK violated NDCC 49-23-05(5) in case numbers PU-20-343, PU-21-241, and PU-21-305, and violated 49-23-06(6)(a) in case number PU-21-241.

BEK Consulting, LLC 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, BEK Consulting, LLC agrees to be assessed a civil penalty of \$1,100 in Case No. PU-20-343; \$3,000 in Case No. PU-21-241; \$1,200 in Case No. PU-21-305; for a total of \$5,300, payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving the Consent Agreement.

Having considered this matter, the Commission finds the Consent Agreement filed on August 25, 2021, is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Consent Agreement between BEK Consulting, LLC and Advocacy Staff, filed August 25, 2021, is approved. A copy of the Consent Agreement is attached to and made a part of this Order.
2. BEK Consulting, LLC is assessed a civil penalty of \$1,100 in Case No. PU-20-343; \$3,000 in Case No. PU-21-241; and \$1,200 in Case No. PU-21-305; for a total of \$5,300.
3. BEK Consulting, LLC shall remit \$2,650 of the \$5,300 payable to the North Dakota Public Service Commission within ten business days of service of the Order.
4. In the event the Commission finds BEK Consulting, LLC violated North Dakota One-Call Law within five years of the date of this Order, BEK, Consulting, LLC shall remit the suspended portion of the penalty, \$2,650, within the time ordered by the Commission

and remit any additional fines or penalties imposed for subsequent violation.

PUBLIC SERVICE COMMISSION



Randy Christmann
Commissioner



Julie Fedorchak
Chair



Brian Kroshus
Commissioner

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	Case Nos. PU-20-343
)	PU-21-241
)	PU-21-305
)	
vs.)	
)	CONSENT AGREEMENT
BEK Consulting, LLC,)	
)	
Respondent .)	

Preliminary Statement

This Consent Agreement is entered into by and between BEK Consulting, LLC (BEK) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket Nos. PU-20-343, PU-21-241, and PU-21-305.

Case No. PU-20-343: On July 2, 2020, BEK personnel provided an excavation notice to the North Dakota One-Call Notification Center (NDOC). The NDOC assigned locate ticket number 20080473 to the excavation notice. The work was for installation of a water line at 1219 McKenzie Street, New England, ND. The expiration date for the ticket was July 29, 2020.

On July 7, 2020, BEK began an excavation as defined in North Dakota Century Code (NDCC) section 49-23-01(7) at the location cited in the excavation notice. As

a result of this excavation, damage to a Montana-Dakota Utilities Company's (MDU) 2-inch natural gas line was sustained. The ticket indicated five customers were affected. Damages was estimated at \$1,219.33.

On July 17, 2020, the Commission received a ND One-Call Complaint from MDU. The complaint alleged a violation by BEK of NDCC section 49-23-05(5) for failure to conduct an excavation in a careful and prudent manner.

On July 17, 2020, Commission staff issued a letter informing BEK of MDU's complaint and requested a response by July 31, 2020. BEK's July 30, 2020 response did not dispute MDU's claim.

Case No. PU-21-241: On June 1, 2021, BEK personnel provided an excavation notice to the NDOC. The NDOC assigned locate ticket number 21053859 to the excavation notice. The work was for installation of a storm sewer in Alexander, ND. The expiration date for the ticket was June 25, 2021.

On June 24, 2021, BEK began two excavations as defined in NDCC section 49-23-01(7) in the area cited in the excavation notice. As a result of these excavations, damage to a 3/4-inch MDU natural gas line at 806 Bruegger St. and a 1-inch MDU natural gas line at 820 Bruegger St. were sustained. BEK did not notify MDU of damage to the 1-inch natural gas line as soon as reasonably possible in violation of NDCC section 49-23-06(1)(a). The ticket indicated two customers were affected. Damages was estimated at \$2,441.

On June 25, 2021, the Commission received a ND One-Call Complaint from MDU. The complaint alleged a violation by BEK of NDCC section 49-23-05(5) for failure to conduct two excavations in a careful and prudent manner.

On July 13, 2021, Commission staff issued a letter informing BEK of MDU's complaint and requested a response by July 27, 2021. BEK's July 27, 2021 response did not dispute MDU's claim that BEK did not conduct its excavations in a careful and prudent manner.

Case No. PU-21-305: On June 24, 2021, BEK personnel provided an excavation notice to the NDOC. The NDOC assigned locate ticket number 21071402 to the excavation notice. The work was for installation of a storm sewer at 112 Manning Ave., Alexander, ND. The expiration date for the ticket was July 20, 2021.

On June 29, 2021, BEK began an excavation as defined in NDCC section 49-23-01(7) at the location cited in the excavation notice. As a result of this excavation, damage to a 3/4-inch MDU natural gas line was sustained. The ticket indicated three customers were affected. Damages was estimated at \$3,000.

On July 1, 2021, the Commission received a ND One-Call Complaint from MDU. The complaint alleged a violation by BEK of North Dakota Century Code (NDCC) section 49-23-05(5) for failure to conduct an excavation in a careful and prudent manner.

On July 13, 2021, Commission staff issued a letter informing BEK of MDU's complaint and requested a response by July 27, 2021. BEK's July 27, 2021 response:

did not dispute MDU's claim that BEK did not conduct its excavation in a careful and prudent manner.

Having investigated the alleged violations, Staff believes that BEK violated NDCC 49-23-05(5) in Case Nos. PU-20-343, PU-21-241, and PU-21-343, and NDCC 49-23-06(1)(a) in Case No. PU-21-241.

BEK and 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, Staff and BEK agree to the following, subject to the approval and acceptance of the Commission:

1. BEK violated NDCC section 49-23-06(1)(a) in Case No. PU-21-241 by not notifying the operator as soon as reasonably possible of damage to an underground facility.
2. BEK violated NDCC 49-23-05(5) in Case Nos. PU-20-343, PU-21-241, and PU-21-343 by failing to conduct the excavations in a careful and prudent manner.
3. BEK agrees to be assessed a civil penalty of \$1,100 in Case No. PU-20-343, \$3,000 in Case No. PU-21-241, \$1,200 in Case No. PU-21-305, for a total of \$5,300. BEK agrees to remit \$2,650 of the \$5,300, payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving the Consent Agreement. The remaining \$2,650

civil penalty is suspended on the condition that BEK commits no further violations of the North Dakota One-Call Law (North Dakota Century Code Chapter 49-23) within five years after the date of the Order. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violations alleged in the Cases.

4. In the event the Commission finds BEK violated the North Dakota One-Call Law within five years of the date of the Order, BEK 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.
5. If within five years of the date of the Order there is no subsequent violation of the North Dakota One-Call Law by BEK, the penalty is withdrawn.
6. BEK consents to the filing of the Consent Agreement and an Order in the Cases and hereby waives any further procedural requirements with respect to the Order's issuance. Provided the Public Service Commission adopts this Consent Agreement and issues an Order consistent with it, BEK understands and agrees in the Cases to waive all rights to contest the violations, the right to be represented by counsel, the right to present evidence and arguments to the Commission, the right to cross examine witnesses, or contest the validity of this Consent Agreement and Order Adopting this Consent Agreement, including all rights to administrative or judicial hearings or appeals.
7. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Agreement and Order.

8. 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.
9. The undersigned is authorized to act on behalf of BEK and bind BEK for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 25 day of August, 2021

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By: _____

Brian Johnson
Special Assistant Attorney General Bar ID 07397
North Dakota Public Service Commission
600 East Boulevard Avenue Dept. 408
Bismarck ND, 58505
701-328-2407

Dated this 25 day of August, 2021

BEK Consulting, LLC

By: _____

{insert name and title}