

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
North Country Contracting, LLC  
Damage Prevention Enforcement

Case No. PU-20-362

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 **19th day of August 2021** 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**

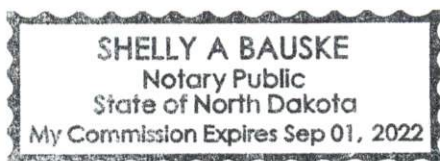
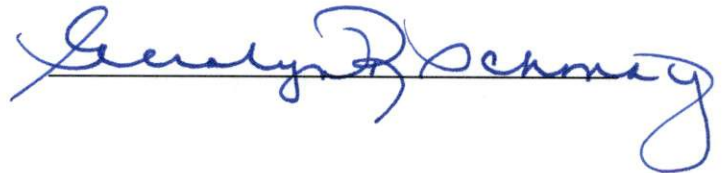
The envelopes were addressed as follows:

Toby Gross  
Montana-Dakota Utilities Co.  
909 Airport Road  
Bismarck, ND 58504  
**Cert. No. 7020 1810 0000 0893 9721**

Derrick Fuhelman  
North Country Contracting  
1620 25<sup>th</sup> St. S  
Moorhead, MN 56560  
**Cert. No. 7020 1810 0000 0893 9738**

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

Subscribed and sworn to before me  
this **19th day of August 2021**.



  
Notary Public

SEAL

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

**Public Service Commission  
North Country Contracting, LLC  
Damage Prevention Enforcement**

**Case No. PU-20-362**

**ORDER ON CONSENT AGREEMENT**

**August 18, 2021**

**Preliminary Statement**

On August 11, 2020, the Commission received a ND One-Call Complaint from Montana-Dakota Utilities Co. (MDU) alleging a violation by North Country Contracting, LLC of North Dakota Century Code (NDCC) chapter 49-23: One-Call Excavation Notice System.

On August 12, 2020, the Commission sent a letter to North Country Contracting, LLC enclosing the August 11, 2020 Complaint, requesting a response by August 26, 2020.

On September 14, 2020, North Country Contracting, LLC filed a response to the Complaint.

On July 26, 2021, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy Staff) and North Country Contracting, LLC was filed for the resolution of the Complaint.

**Discussion**

North Country Contracting, LLC is a foreign limited liability company with a principal address of 1620 25<sup>th</sup> Street South, Moorhead, MN 56560.

On May 4, 2020, North Country Contracting, LLC provided an excavation notice to the North Dakota One Call Notification Center (NDOC), with work to begin on May 7, 2020. The NDOC assigned locate ticket number 20033637 to the excavation notice at 2724 Hawken ST, Bismarck, ND. The expiration date for the ticket was May 28, 2020.

On July 29, 2020, thirty one days after the expiration date for the ticket, North Country Contracting, LLC personnel 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,

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estimated \$1500 damage was caused to a 1-1/4" natural gas service line. One MDU natural gas service customer was affected by the incident.

The Complaint alleges that North Country Contracting, LLC violated NDCC section 49-23-04(6)(g) for failure to renew its excavation or location request prior to the expiration of the twenty-one day period.

NDCC section 49-23-04(6)(g) states that "[a]n excavator may not use a location more than twenty-one days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected."

There was no agreement between North Country Contracting, LLC and MDU that would have relieved North Country Contracting, LLC of its obligation to request a relocate prior to commencing excavation at the location.

Having investigated the alleged violation, Advocacy Staff believes that North Country Contracting, LLC violated NDCC section 49-23-04(6)(g).

North Country Contracting, 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, North Country Contracting, LLC agrees to be assessed a civil penalty of \$2,000, 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 is reasonable and acceptable. Therefore, the Commission issues the following:

### **Order**

The Commission Orders:

1. The Consent Agreement, filed on July 26, 2021, between North Country Contracting, LLC and Advocacy Staff is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. North Country Contracting, LLC is assessed a civil penalty of \$2,000.
3. North Country Contracting, LLC shall remit \$2,000 civil penalty, payable to the North Dakota Public Service Commission, within ten business days of service of this Order.

PUBLIC SERVICE COMMISSION

  
Randy Christmann  
Commissioner

  
Julie Fedorchak  
Chair

  
Brian Kroshus  
Commissioner



underground facilities at a residence located at 2724 Hawken Street, Bismarck, ND. This excavation took place twenty-one days past the planned excavation date. Damage to a 1 1/4" natural gas service line was sustained. Damage was estimated at \$1500.

NDCC section 49-23-04(6)(g) states that "[a]n excavator may not use a location more than twenty-one days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected".

There was no agreement between NCC and MDU that would have relieved NCC of its obligation to request a relocate request prior to commencing excavation at the location.

Having investigated the alleged violation, Staff believes that NCC violated NDCC section 49-23-04(6)(g).

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

1. NCC violated NDCC section 49-23-04(6)(g) for failure to renew its excavation or location request prior to the expiration of the twenty-one day period.
2. NCC agrees to be assessed a civil penalty of \$2000, payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving the Consent Agreement (Order).

3. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violation alleged in the Case.
4. NCC consents to the filing of the Consent Agreement and an Order 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, NCC understands and agrees to waive all rights to contest the violation, 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, including all rights to administrative or judicial hearings or appeals.
5. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement and Order.
6. 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.
7. The undersigned is authorized to act on behalf of NCC and bind NCC for purposes

of this Consent Agreement and knows and fully understands the content and effect.

Dated this 20<sup>th</sup> day of July, 2021

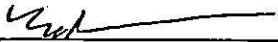
PUBLIC SERVICE COMMISSION  
ADVOCACY STAFF – DAMAGE PREVENTION

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 23 day of JULY, 2021

North Country Contracting, LLC

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

Name: MITCH FUCHS \_\_\_\_\_