

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
Wagner Construction, Inc.  
Damage Prevention Enforcement

Case No. PU-20-423

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 **20th day of January 2022** 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**

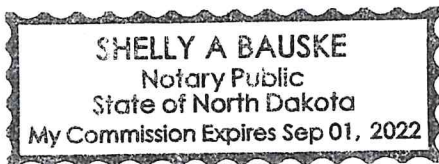
The envelopes were addressed as follows:

Kalan Wagner – President  
Wagner Construction, Inc.  
3151 Hwy 53  
International Falls, MN 56649  
Cert. No. 7021 2720 0001 0491 5036

Dawn Roness  
Montana-Dakota Utilities Co.  
1130 20<sup>th</sup> Ave SW  
Minot, ND 58701  
Cert. No. 7021 2720 0001 0491 5043

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

Subscribed and sworn to before me  
this **20th day of January 2022**.



A handwritten signature in blue ink that reads "Geralyn R. Schmaltz".

A handwritten signature in blue ink that reads "Shelly A. Bauske".

Notary Public

SEAL

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

**Public Service Commission**  
**Wagner Construction, Inc.**  
**Damage Prevention Enforcement**

**Case No. PU-20-423**

**ORDER ON CONSENT AGREEMENT**

**January 18, 2022**

**Preliminary Statement**

On October 12, 2020, the Commission received a ND One-Call Complaint (Complaint) from Montana-Dakota Utilities Co. (MDU) alleging four violations by Wagner Construction, Inc. (Wagner) of North Dakota Century Code (NDCC) chapter 49-23: One-Call Excavation Notice System.

On October 14, 2020, the Commission sent a letter to Wagner enclosing the October 12, 2020, Complaint, requesting a response by October 28, 2020.

On October 28, 2020, Wagner responded to the Complaint.

On December 29, 2021, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy Staff) and Wagner was filed for the resolution of the Complaint.

**Discussion**

Wagner Construction, Inc. is a domestic corporation with a principal address of 3800 E Divide Ave, Bismarck, ND 58501.

The Complaint alleges four violations by Wagner of North Dakota Century Code (NDCC) section 49-23-05(5) by failing to conduct its excavations in a careful and prudent manner.

The excavations occurred in Minot, ND in September 2020 while installing storm sewer, and resulted in damages to a 4-inch steel, a 4-inch plastic, and two ¾-inch plastic underground natural gas lines. The damage to the facilities was approximately \$12,600. No customers were out of gas service due to damages to the 4-inch lines, 2 customers were out of gas service due to damages to ¾-inch lines.

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."

Having investigated the alleged violations, Advocacy Staff believes that Wagner violated NDCC section 49-23-05(5) in each of the four instances referenced in MDU's complaint.

Wagner 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, Wagner agrees to be assessed a civil penalty of \$13,800, with \$3,800 suspended on condition that Wagner commits no further violation of the North Dakota One-Call Law (North Dakota Century Code chapter 49-23 within five years of the date of an Order accepting 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 between Wagner Construction, Inc. and Advocacy Staff filed with the Commission on December 29, 2021, is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. Wagner is assessed a civil penalty of \$13,800.
3. Wagner shall remit \$10,000 civil penalty, payable to the North Dakota Public Service Commission, within ten business days of service of this Order. The remaining \$3,800 civil penalty is suspended on condition that Wagner commit no further violation of North Dakota Century Code chapter 49-23 within five years of the date of this Order.
4. In the event the Commission finds Wagner violated North Dakota One-Call Law within five years of the date of this Order, Wagner shall remit the suspended portion of the penalty, \$3,800, 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

\_\_\_\_\_  
Vacant

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

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PUBLIC SERVICE COMMISSION,	)	
	)	
Complainant,	)	Case No. PU-20-423
vs.	)	
	)	CONSENT AGREEMENT
Wagner Construction, Inc.,	)	
Respondent .	)	

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**Preliminary Statement**

This Consent Agreement is entered into by and between Wagner Construction, Inc. (Wagner) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket No. PU-20-423.

On October 12, 2020, the Commission received a ND One-Call Complaint from Montana-Dakota Utilities Co. (MDU). The complaint alleged four violations by Wagner of North Dakota Century Code (NDCC) section 49-23-05(5) for failure to conduct the excavations 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."

Having investigated the alleged violations, Staff believes that Wagner violated NDCC section 49-23-05(5) in each of the four instances referenced in MDU's complaint.

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

1. Wagner violated NDCC section 49-23-05(5) in four separate instances by failing to conduct its excavations in a careful and prudent manner.
2. Wagner agrees to be assessed a civil penalty of \$13,800. Wagner agrees to remit \$10,000 of the \$13,800, payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving the Consent Agreement (Order). The remaining \$3,800 civil penalty is suspended on the condition that Wager commits no further violation of NDCC section 49-23 within five years of the date of the Order.
3. In the event the Commission finds Wager violated NDCC section 49-23 within five years of the date of the Order, Wager shall remit the suspended portion of the penalty, within the time ordered by the Commission, in addition to any additional fines or penalties imposed for the subsequent violation.
4. If within five years of the date of the Order there is no subsequent violation of NDCC section 49-23 by Wager, the remaining \$3,800 penalty is withdrawn.
5. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violations alleged in the Case.

6. Wagner 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, Wagner 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 Wagner and bind Wagner for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 29<sup>th</sup> day of December, 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 29 day of December, 2021

Wagner Construction, Inc.

By: Kalan Wagner  
Digitally signed by Kalan Wagner  
DN: C=US,  
E=kalan@wagnerconstructioninc.com,  
O=Wagner Construction Inc., CN=Kalan  
Wagner  
Date: 2021.12.29 08:02:18-05'00'

Kalan Wagner (President)