

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
JMAC Resources, Inc.
Damage Prevention Enforcement**

Case No. PU-21-302

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 **2nd day of September 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

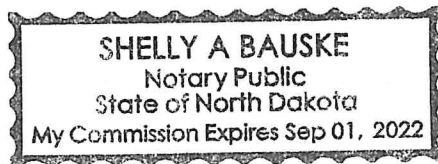

The envelopes were addressed as follows:

Rob Fogarty
JMAC Resources
121 48th Ave. SW
Williston, ND 58801
Cert. No. 7020 1810 0000 0893 9943

Bill Dutton
Montana-Dakota Utilities Co.
121 8th Ave. W
Williston, ND 58801
Cert. No. 7020 1810 0000 0893 9950

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

Subscribed and sworn to before me
this **2nd day of September 2021**.



Notary Public

SEAL

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
JMAC Resources, Inc.,
Damage Prevention Enforcement**

Case No. PU-21-302

ORDER ON CONSENT AGREEMENT

September 1, 2021

Preliminary Statement

On July 1, 2021, the Commission received a ND One-Call Complaint from Montana-Dakota Utilities Co. (MDU) alleging a violation by JMAC Resources, Inc. (JMAC) of North Dakota Century Code (NDCC) chapter 49-23: One-Call Excavation Notice System (Complaint).

On July 8, 2021, the Commission sent a letter to JMAC enclosing the Complaint and requesting a response by July 22, 2021.

On July 19, 2021, JMAC provided a response to the Public Service Commission

On August 16, 2021, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy Staff) and JMAC was filed for the resolution of the Complaint.

Discussion

JMAC Resources, Inc. is a domestic corporation with a principal address of 1505 N Miller St, #260, Shela Pistoresi, Wenatchee, WA 98801.

On June 1, 2021, JMAC personnel provided an excavation notice to North Dakota One Call Notification Center (NDOC), with work to begin on June 4, 2021. NDOC assigned locate number 21053896.

On June 18, 2021, JMAC began an excavation as defined in NDCC section 49-23-01(7), excavating for a sign base at 35th St W and 4th Ave W, Williston, ND. As a result of this excavation, \$900 damage was caused to MDU's 1.25" plastic natural gas service line with 1 customer affected.

The Complaint alleges that JMAC violated NDCC section 49-23-05(5) by failing to conduct the 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."

Having investigated the alleged violation, Advocacy Staff believes that JMAC violated NDCC section 49-23-05(5).

JMAC 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, JMAC agrees to be assessed a civil penalty of \$1500, with \$500 suspended on the condition that JMAC 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. JMAC will make \$1000 payable to the North Dakota Public Service Commission within ten business days of service 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 JMAC Resources, Inc. and Advocacy Staff, filed with the Commission on August 16, 2021, is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. JMAC Resources, Inc. is assessed a civil penalty of \$1500.
3. JMAC shall remit \$1000 civil penalty, payable to the North Dakota Public Service Commission, within ten business days of service of this Order. The remaining \$500 civil penalty is suspended on condition that JMAC 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 JMAC violated North Dakota One-Call Law within five years of the date of this Order, JMAC shall remit the suspended portion of the penalty, \$500, 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,)	
)	
vs.)	Case No. PU-21-302
)	
JMAC Resources, Inc.,)	CONSENT AGREEMENT
Respondent .)	

Preliminary Statement

This Consent Agreement is entered into by and between JMAC Resources, Inc. (JMAC) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket No. PU-21-302.

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

On July 8, 2021, Commission staff issued a letter informing JMAC of MDU's complaint filing and requested a response by July 22, 2021. JMAC's July 16, 2021 response did not dispute the alleged failure to conduct the excavation in a careful and prudent manner.

On June 1, 2021, JMAC personnel provided an excavation notice to the North Dakota One Call Notification Center (NDOC), with work to begin on June 4, 2021. The

NDOC assigned locate ticket number 21053896 to the excavation notice, which indicates the work was demolition at 421 Airport Road, Williston, ND. The expiration date for the ticket was June 25, 2021.

On June 18, 2021, JMAC began an excavation as defined in NDCC section 49-23-01(7) while excavating for a sign base at the location cited in the excavation notice. As a result of this excavation, damage was caused to MDU's 1.25" plastic natural gas service line.

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 violation, Staff believes that JMAC violated NDCC section 49-23-05(5).

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

1. JMAC violated NDCC section 49-23-05(5) by failing to conduct its excavation in a careful and prudent manner.
2. JMAC agrees to be assessed a civil penalty of \$1,500. JMAC agrees to remit \$1,000 of the \$1,500, 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 \$500 civil penalty is suspended on the condition that JMAC 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 JMAC violated the NDCC section 49-23 within five years of the date of the Order, JMAC 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 the NDCC section 49-23 by JMAC, the remaining \$500 penalty is withdrawn.
5. 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.
6. JMAC 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, JMAC 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.
7. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent 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 JMAC and bind JMAC for purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 16th 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 9th day of August, 2021

JMAC Resources, Inc.

By: _____

Name: Rob Fogarty