



Public Service Commission  
State of North Dakota

COMMISSIONERS

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August 26, 2021

Mr. Steve Kahl  
Executive Secretary  
ND Public Service Commission  
600 E Boulevard Avenue Dept. 408  
Bismarck, ND 58505-0480

**via Hand Delivery**

Re: 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  
Public Service Commission  
BEK Consulting, LLC  
Damage Prevention Enforcement

Dear Mr. Kahl:

Enclosed is a copy of the Consent Agreement to be filed in the above captioned cases.

Best Regards,

Brian Johnson  
Legal Counsel

Enclosure

5 PU-21-305 Filed 08/26/2021 Pages: 7  
Consent Agreement  
Public Service Commission

5 PU-20-343 Filed 08/26/2021 Pages: 7  
Consent Agreement  
Public Service Commission  
6 PU-21-241 Filed 08/26/2021 Pages: 7  
Consent Agreement  
Public Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

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

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**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}