

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
Tand Construction, LLC  
Damage Prevention Enforcement

Case No. PU-21-319

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 **21st day of October 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**

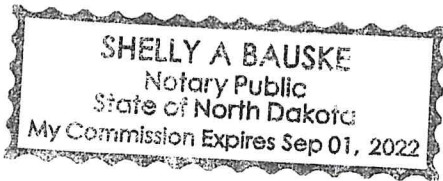
The envelopes were addressed as follows:

Lori Spina Hoherz, Managing Member  
Tand Construction, LLC  
1916 40<sup>th</sup> Ave SE  
Mandan, ND 58554  
Cert. No. 7020 1290 0000 1334 3843

James Byerley  
West River Telecom  
101 Main St W  
Hazen, ND 58545  
Cert. No. 7020 1290 0000 1334 3850

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

Subscribed and sworn to before me  
this **21st day of October 2021**.



*Shelly A Bauske*  
\_\_\_\_\_  
Notary Public

SEAL

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

**Public Service Commission**  
**Tand Construction, LLC**  
**Damage Prevention Enforcement**

**Case No. PU-21-319**

**ORDER ON CONSENT AGREEMENT**

**October 20, 2021**

**Preliminary Statement**

On July 9, 2021, the Commission received a ND One-Call Complaint (Complaint) from West River Telecom alleging a violation by Tand Construction, LLC (Tand) of North Dakota Century Code (NDCC) chapter 49-23: One-Call Excavation Notice System.

On July 12, 2021, the Commission sent a letter to Tand enclosing the July 9, 2021, Complaint, requesting a response by July 26, 2021.

On July 22, 2021, Tand responded to the Complaint.

On September 7, 2021, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy Staff) and Tand was filed for the resolution of the Complaint.

**Discussion**

Tand is a domestic limited liability business with a principal address of 1916 40th Ave SE, Mandan, ND 58554-4632.

On November 4, 2020, Tand began an excavation as defined in NDCC section 49-23-01(7) while performing sewer line work at Stanton, ND. The excavations performed by Tand damaged West River Telecom's fiber optic telecommunications cable in six locations. The damage was estimated at \$11,129.67. Six telecommunications customers were affected by the incidents.

The Complaint alleges that Tand violated NDCC section 49-23-05(5) by failing 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, Advocacy Staff believes that Tand violated NDCC section 49-23-05(5) in six separate instances between November 4, 2020, and November 16, 2020.

Tand 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, Tand agrees to be assessed a civil penalty of \$3,000. Tand agrees to remit \$1,500 of the \$3,000 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 Tand and Advocacy Staff filed with the Commission on September 7, 2021, is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. Tand is assessed a civil penalty of \$3,000 with \$1,500 suspended, on the condition Tand commits no further violations of the NDCC 49-23 within five years of the date of the Order.
3. In the event the Commission finds Tand violated the NDCC section 49-23 within five years of the date of the Order, Tand shall remit the suspended portion of the penalty \$1,500, within the time ordered by the Commission, in addition to any additional fines or penalties imposed for the subsequent violation.

### PUBLIC SERVICE COMMISSION

		
<b>Randy Christmann</b> Commissioner	<b>Julie Fedorchak</b> Chair	<b>Brian Kroshus</b> Commissioner

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

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PUBLIC SERVICE COMMISSION,	)	
	)	
vs. Complainant,	)	Case No. PU-21-319
	)	
Tand Construction, LLC,	)	CONSENT AGREEMENT
	)	
Respondent .	)	

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**Preliminary Statement**

This Consent Agreement is entered into by and between Tand Construction, LLC (Tand) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket No. PU-21-319.

On July 9, 2021, the Commission received a ND One-Call Complaint from West River Telecom. The complaint alleged violations by Tand of North Dakota Century Code section (N.D.C.C.) 49-23-05(5) for failure to conduct its excavations in a careful and prudent manner.

N.D.C.C.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 Tand violated

N.D.C.C. 49-23-05(5) in six separate instances between November 4, 2020 and November 16, 2020.

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

1. Tand violated N.D.C.C. 49-23-05(5) by failing to conduct its excavations in a careful and prudent manner.
2. Tand agrees to be assessed a civil penalty of \$3,000. Tand agrees to remit \$1,500 of the \$3,000, 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 \$1,500 civil penalty is suspended on the condition that Tand 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 Tand violated the NDCC section 49-23 within five years of the date of the Order, Enyweh 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 Tand, the remaining \$1,500 penalty is withdrawn.

5. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violations alleged in the Case.
6. Tand 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, Tand 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 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 Tand and bind Tand for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 7<sup>th</sup> day of September, 2021

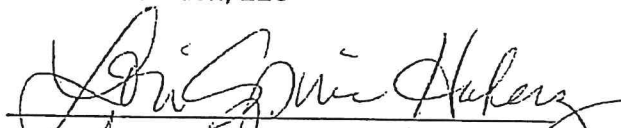
PUBLIC SERVICE COMMISSION  
ADVOCACY STAFF – DAMAGE PREVENTION

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 2nd day of September, 2021

Tand Construction, LLC

By:   
Its: Managing Member