

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
JP Hager Enterprises, LLC  
Damage Prevention Enforcement

Case No. PU-21-338

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**

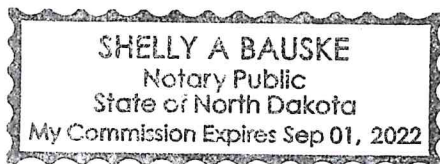
The envelopes were addressed as follows:

Jason Hager  
JP Hager Enterprises  
521 6<sup>th</sup> St E  
Harvey, ND 58341  
Cert. No. 7020 1290 0000 1334 4024

David Moeller  
Otter Tail Power Company  
1534 Advent St.  
Harvey, ND 58341  
Cert. No. 7020 1290 0000 1334 4017

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**.



*Geralyn R. Schmaltz*

*Shelly A Bauske*  
Notary Public

SEAL

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

**Public Service Commission**  
**JP Hager Enterprises, LLC**  
**Damage Prevention Enforcement**

**Case No. PU-21-338**

**ORDER ON CONSENT AGREEMENT**

**January 18, 2022**

**Preliminary Statement**

On July 26, 2021, the Commission received a ND One-Call Complaint (Complaint) from Otter Tail Power Company (OTP) alleging a violation by JP Hager Enterprises, LLC (JP) of North Dakota Century Code (NDCC) chapter 49-23: One-Call Excavation Notice System.

On July 28, 2021, the Commission sent a letter to JP enclosing the July 26, 2021, Complaint, requesting a response by August 11, 2021.

On September 2, 2021, JP responded to the Complaint.

On November 1, 2021, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy Staff) and JP was filed for the resolution of the Complaint.

**Discussion**

JP Hager Enterprises, LLC is a domestic limited liability company with a principal address of 521 6<sup>th</sup> St E, Harvey, ND 58341.

On or about June 28, 2021, JP personnel began excavations as defined in NDCC section 49-23-01(7) while performing concrete installation at 909 Lincoln Ave, 109 Brewster St W, and 209 9th St E in Harvey, ND. There is no evidence of JP personnel contacting the North Dakota One Call Notification Center prior to beginning these excavations. No damage resulted from JP's excavations.

The Complaint alleges violations by JP of North Dakota Century Code (NDCC) section 49-23-04(1) by failing to provide an excavation or location notices before beginning any excavation.

NDCC section 49-23-04(1) states that except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice before beginning any excavation. An excavation begins the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice.

JP's September 2, 2021, response confirmed that it did not have valid excavation or location notices prior to beginning its excavations.

Having investigated the alleged violations, Advocacy Staff believes that JP violated NDCC section 49-23-04(1) in all three locations cited above.

JP 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, JP agrees to be assessed a civil penalty of \$1,500, with \$1,000 suspended on condition that JP 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. The Commission finds the penalty provision of the Consent Agreement is insufficient.

Having considered this matter, the Commission finds the Consent Agreement is not reasonable and is unacceptable. Therefore, the Commission issues the following:

### Order

The Commission Orders the Consent Agreement between JP Hager Enterprises, LLC and Advocacy Staff filed with the Commission on November 1, 2021, is denied without prejudice.

### PUBLIC SERVICE COMMISSION

  
Randy Christmann  
Commissioner

  
Julie Fedorchak  
Chair

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Vacant