

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
BEK Consulting LLC
Damage Prevention Enforcement**

Case No. PU-21-377

ORDER ON CONSENT AGREEMENT

November 17, 2021

Preliminary Statement

On August 30, 2021, the Commission received a ND One-Call Complaint (Complaint) from Montana Dakota Utilities Co. (MDU) alleging a violation by BEK Consulting, LLC (BEK) of North Dakota Century Code (NDCC) chapter 49-23: One-Call Excavation Notice System.

On September 1, 2021, the Commission sent a letter to BEK enclosing the August 30, 2021, Complaint, requesting a response by September 14, 2021.

On September 13, 2021, BEK responded to the Complaint.

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

Discussion

BEK Consulting, LLC is a domestic limited liability company with a principal address of 913 38th Ave E, Dickinson, ND, 58602.

On August 13, 2021, BEK personnel provided an excavation notice to the North Dakota One-Call Notification Center (NDOC). The NDOC assigned locate ticket number 21103481 to the excavation notice. The expiration date for the ticket was September 8, 2021.

On August 27, 2021, BEK began an excavation as defined in NDCC section 49-23-01(7) while performing the installation of a storm sewer in Alexander, ND at the location cited in the excavation notice. As a result of this excavation, damage occurred to a MDU ¾ inch natural gas line. The damage was estimated at \$1,000. One natural gas customer was affected by the incident.

The Complaint alleges a violation by BEK of NDCC section 49-23-05(5) for failure to conduct an 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 violations, Advocacy Staff believes that BEK violated NDCC section 49-23-05(5).

BEK 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, BEK agrees to be assessed a civil penalty of \$1,500, payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting the Consent Agreement.

Under the Consent Agreement, BEK also agrees to remit the \$2,650 civil penalty that was suspended in Case Nos. PU-20-343, PU-21-241 and PU-21-305. The Commission's September 22, 2021, Order in those proceedings required that, in the event the Commission finds BEK Consulting, LLC violated North Dakota One-Call Law within five years of the date of that Order, BEK Consulting, LLC shall remit the suspended portion of the penalty, \$2,650.

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 BEK and Advocacy Staff filed with the Commission on October 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. BEK is assessed a civil penalty of \$1,500 in Case No. PU-21-377.
3. BEK shall remit a civil penalty of \$2,650 in Case Nos. PU-20-343, PU-21-241 and PU-21-305.

4. BEK shall remit the total civil penalty of \$4,150 payable to the North Dakota Public Service Commission within ten business days of service of this Order.

PUBLIC SERVICE COMMISSION

"Nay"

Randy Christmann
Commissioner

Julie Fedorchak

Julie Fedorchak
Chair

Brian Kroshus

Brian Kroshus
Commissioner

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	
)	
vs.)	Case No. PU-21-377
)	
BEK Consulting, LLC,)	CONSENT AGREEMENT
)	
)	
Respondent .)	

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 No. PU-21-377.

On August 13, 2021, BEK personnel provided an excavation notice to the North Dakota One-Call Notification Center (NDOC). The NDOC assigned locate ticket number 21103481 to the excavation notice. The work was for installation of a storm sewer in Alexander, ND. The expiration date for the ticket was September 8, 2021.

On August 27, 2021, 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) 3/4-inch natural gas line was sustained. The ticket indicated one customer was affected. Damages was estimated at \$1,000.

On August 30, 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 an excavation in a careful and prudent manner.

On September 1, 2021, Commission staff issued a letter informing BEK of MDU's complaint and requested a response by September 14, 2021. BEK's September 13, 2021 response did not dispute MDU's claim that BEK hit the line.

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

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 49-23-05(5) by failing to conduct the excavation in a careful and prudent manner.
2. BEK agrees to be assessed a civil penalty of \$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.

3. 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.
4. BEK 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, BEK 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.
5. Pursuant to the Order approved by the Commission in Case Nos. PU-20-343, PU-21-241, and PU-21-305, BEK must remit the suspended portion of the penalty in those cases, \$2,650, payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving the Consent Agreement.
6. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Agreement and Order.
7. 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.

8. 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 7th day of October, 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 7th day of October, 2021

BEK Consulting, LLC

By: _____

{insert name and title}