

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Chaznline Construction, Inc.
Damage Prevention Enforcement

Case No. PU-21-418

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 **3rd day of February 2022**, she deposited in the United States Mail, at Bismarck, North Dakota, **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

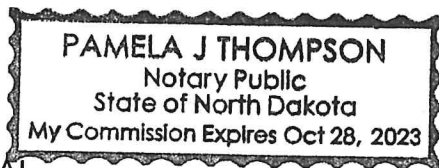
- **Prima Facie Motion**
- **Complaint**

The envelope was addressed as follows:

Chaznline Construction, Inc.
13524 Highway 16
Sidney, MT 59270-0215
Cert. No. 7021 2720 0001 0491 5098

The addresses shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **3rd day of February 2022**.



SEAL

Pamela J Thompson
Notary Public

APPROVED

DATE: 02/02/2022
PJT

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Chaznline Construction, Inc.
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MOTION

February 2, 2022

I move the Commission find the Formal Complaint filed by the North Dakota Public Service Commission Advocacy Staff on January 5, 2022, states a prima facie case, and serve the Complaint on the Respondent in Public Service Commission, Chaznline Construction, Inc., Damage Prevention Enforcement, Case No. PU-21-418.

PJF

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

Public Service Commission
Chaznline Construction, Inc.
Damage Prevention Enforcement

Case No. PU-21-418

Public Service Commission,)	
Complainant,)	
vs.)	
Chaznline Construction, Inc.,)	Complaint
Respondent.)	

The Public Service Commission of North Dakota (Commission), by and through Advocacy Staff (Staff), for its complaint against Chaznline Construction, Inc., alleges and shows the following:

I

Chaznline Construction, Inc. (Chaznline) is a foreign corporation with offices located at 13524 Highway 16, Sidney, MT 59270-0215. Chaznline is listed as inactive – involuntary and not in good standing with the North Dakota Secretary of State. Due to this status, there is no registered agent listed.

II

Kinder Morgan GP LLC (Kinder Morgan) is a foreign corporation authorized to do business in North Dakota.

III

North Dakota Century Code (NDCC) section 49-23-04(4) provides:

An excavator may begin excavation in a location when the excavator has received notice that all facilities have been located or cleared or at the expiration of the location period or extension of the location period.

North Dakota Century Code (N.D.C.C.) 28-32-22 provides:

Unless otherwise prohibited by specific statute or rule, informal disposition may be made of any adjudicative proceeding, or any part or issue thereof, by stipulation, settlement, waiver of hearing, consent order, default, alternative dispute resolution, or other informal disposition, subject to agency approval. Any administrative agency may adopt rules of practice or procedure for informal disposition if such rules do not substantially prejudice the rights of any party. Such rules may establish procedures for converting an administrative matter from one type of proceeding to another type of proceeding.

North Dakota Century Code (N.D.C.C.) 49-07-01.1 provides:

Any person who violates any statute, commission order, or commission rule which applies to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, 24-09, 32-25, and 51-05.1, titles 60 and 64, and title 49 except for chapters 49-22 and 49-23, shall, in addition to any other penalty provided, be subject to a civil penalty of not to exceed five thousand dollars. A violation occurring under chapter 49-23, in addition to any other penalty, is subject to a civil penalty not to exceed twenty-five thousand dollars. The commission shall develop policies for the assessment of penalties under chapter 49-23 which will take into consideration the severity of damages and the conduct of the offender. The civil penalty may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.

North Dakota Administrative Code section 69-02-04-05 provides:

In any proceeding in which the commission is authorized to act after opportunity for hearing, opportunity is afforded by service of notice fixing a reasonable period of time within which any person desiring to be heard may file a protest or request for a hearing. If a protest or request for hearing is not filed within the time provided, the commission may dispose of the matter on the basis of the pleadings, other submittals, and the studies and recommendations of the staff. A party not requesting oral hearing in the party's pleading is deemed to have waived a hearing for the purpose of the decision, but not for the purpose of applying for rehearing with respect to the decision. If a person requests a hearing but does not show good cause, the commission may determine the matter without a hearing.

On October 25, 2021, the Commission received a ND One-Call Complaint from Ryan Farmer at Kinder Morgan. The complaint alleges a violation by Chaznline of NDCC section 49-23-04(4) of the One-Call Excavation Notice System by beginning an excavation prior to receiving notice that all facilities in the excavation area have been located or cleared or the expiration of the locate period.

V

On October 26, 2021, Commission staff issued a letter informing Chaznline of Kinder Morgan's complaint filing, and requested a response by November 9, 2021, attached as Exhibit 1. As of January 5, 2022, Chaznline has not responded to the letter.

VI

As alleged by Kinder Morgan's complaint, on October 11, 2021, Chaznline personnel provided an excavation notice to the North Dakota One Call Notification Center (NDOC), with work to begin at 14685 38th St NW, Alexander, ND on October 20, 2021. The NDOC assigned locate ticket number 201142036 to the excavation notice, which indicates the work was being performed to repair a water line, attached as Exhibit 2. Under NDCC section 49-23-04(6)(g), the expiration date for the locate ticket is November 10, 2021.

As alleged by Kinder Morgan's complaint, on October 19, 2021 at approximately 12:55 p.m., Chaznline began an excavation as defined in NCCC section 49-23-01(7) while performing water line repair at the location cited in the excavation notice. No damage resulted from this excavation.

Based on staff's investigation, the final operator positive response was registered to ticket 201142036 on October 19, 2021 at 7:01 p.m.

VII

Chaznline violated NDCC section 49-23-04(4) by beginning an excavation prior to receiving notice that all facilities in the excavation area have been located or cleared or the expiration of the locate period.

VIII

The Commission Damage Prevention Plan provides:

D PROPOSED CIVIL PENALTIES:

1. The following criteria must be used by Commission staff to determine if a civil penalty should be proposed when filing a formal complaint:
 - a. The nature, circumstances and severity of the complaint;
 - b. The degree of suspected fault on the part of the respondent;
 - c. The respondent's history of prior violations or complaints;
 - d. The respondent's ability to pay;
 - e. Any good faith effort by the respondent in attempting to achieve compliance; and
 - f. The effect the penalty may have on the respondent's ability to continue in business.

IX

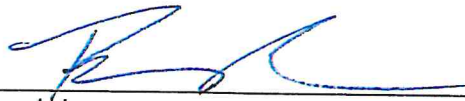
The Respondent must serve an answer to this complaint upon the Complainant and the Commission within twenty days after service of the complaint, or the Commission may deem the complaint to be admitted. Answers must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure.

Prayer for Relief

Based on the foregoing, Staff seeks the following relief:

1. That the Commission find Chaznline Construction, Inc. in violation of NDCC section 49-23 for failing to comply with the One Call requirements enumerated in NDCC section 49-23-04(4).
2. That the Commission impose an appropriate civil penalty up to \$25,000, but at least \$500.
3. Such other relief that the Commission finds just and proper.

Dated this 5th day of January, 2022.



Brian Johnson
Special Assistant Attorney General Bar ID 07937
North Dakota Public Service Commission
600 East Boulevard Avenue Dept. 408
Bismarck ND, 58505
701-328-2407