

Hamre, John G.

From: Ken Carlsen <kcarlsen@Camrudlaw.com>
Sent: Wednesday, July 20, 2022 5:08 PM
To: Johnson, Brian L.; Crockford, Konrad S.
Cc: Tracy Evenson
Subject: GS-22-168 - Affidavit of Doug Bowling.
Attachments: 220720 Affidavit of Doug Bowling - Signed.pdf

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Brian & Konrad,

I've attached an affidavit of Doug Bowling as evidence in support of my client's position. My client will continue to be fully cooperative with your office. Please let me know if you have further questions.

My understanding of the process is your office determines if there was a violation and if so, the appropriate penalty. Your office can then issue a penalty in the form of a consent agreement which is filed with the commission for their approval, or the respondent has the option of requesting a hearing in front of the PSC. If a hearing is requested, the commissioners would determine after the hearing if they believe a violation occurred and what the appropriate penalty would be. Please let me know if my understanding is incorrect or incomplete.

- Ken

Kenneth V. Carlsen | Attorney at Law
Camrud, Maddock, Olson & Larson, Ltd.
401 DeMers Ave., Ste. 500
Grand Forks, ND 58201
T: 701.775.5595 | F: 701.772.3743
kcarlsen@camrudlaw.com | www.camrudlaw.com

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AFFIDAVIT

STATE OF Iowa)

)ss.

COUNTY OF Page)

I, Doug Bowling, being first duly sworn on oath, state and allege as follows:

1. I am currently employed with Eatherly Constructors, Inc. ("ECI"), a Kansas Corporation, and have been continuously employed with ECI since approximately 1998. I have managed, supervised, or participated in excavation projects for approximately 46 years.
2. On or about June 19, 2021, I was employed by ECI as a Project Manager and Site Supervisor.
3. I was assigned to manage ECI's 2021 water line excavation project with East Central Regional Water District ("ECRWD"), which organization is based in Thompson, North Dakota. The project included an area north of Hillsboro, North Dakota
4. I called in the ND One-Call ticket 2106028, which appears to be accurately depicted on pages 3-7 (PDF pages) on Halstad Telephone Company's ("HTC") One-Call complaint filed with the North Dakota Public Service Commission. The dates and other information on the One-Call ticket appears accurate according to my best recollection.
5. On or about June 19, 2021, I was physically on-site north of Hillsboro, North Dakota where ECI equipment cut a Halstad Telephone Company's ("HTC") cable during ECI's excavation of a ECRWD water line ("Excavation Site").
6. On June 19, 2021, Michael Hurley, ECI Field Manager, A.C. Watts, ECI Field Manger, and were also present at the Excavation Site the date of the incident and were present when the ECI equipment cut the cable. There were other ECI employees, most likely laborers, present at the Excavation Site during the excavation that day, but I cannot recall at this time who they were.
7. I have reviewed the map on page 5 (PDF page) of HTC's One-Call complaint and believe the map to be an accurate depiction of the area that includes the Excavation Site. I have also reviewed the photos marked as #3-5 on pages 9-11 (PDF pages) of HTC's complaint and believe the photos to depict the Excavation Site after ECI cut the cables. The equipment in the photos, except the Chevrolet Truck, appears to be ECI equipment me team and I used at the site.
8. I cannot speak to the location or time/date of photos #1 and 2, except to say that the white pipe in the photos could be the ECRWD water pipe we used during the project. I also noted that the marker in photo #2 appears to be a marker set by our engineer to mark the planned water line path. The flag in #2, that I understand HTC is claiming to be the same flag or a flag in the same location as depicted in Photo #3, cannot be the same flag or the same location. I believe the marker near the white vent in photo #3 was placed by the engineer. I believe the engineer's marker near the vent in #3 could be the same engineer's marker as depicted in Photo #2. The flag in the lower half of Photo #3 is not close to the vent so I do not believe it could be the same flag as depicted in #2. See my response in paragraph #10 for further explanation why I believe the HTC flag(s) in #2 and #3 are in different locations and why I believe my team and I followed reasonable measures to ensure the Excavation site was free of conflicts before digging.
9. I also cannot speak to whether the person in photo #1 is Bret Peterson. The person depicted is too small in the photo to make out a face. But, I recall speaking with an person near or at the Excavation Site, prior to June 19, 2021, who identified themselves as being with the 3rd party locator, LSI. I do not recall his name, but I recall him saying that he had a new person onsite helping with the locating on the One-Call ticket in question. I recall him saying the new person had been on the job for about a week.

10. On June 19, 2021, I recall verifying that all the utilities identified in the One-Call ticket had responded to the One-Call ticket. I then walked the path the engineers, AE2S, had marked for the ECRWD water line at the Excavation Site inspecting the path for utility markers or flags that were are within 5-7 feet of the Engineer's path creating a conflict. I recall seeing many markers and flags in the area and note that the One-Call ticket shows many utilities as responding. Except for flags for existing water lines, I do not recall seeing utility markers or flags within 5-7 feet of the engineer's path near or at the Excavation Site. To make sure the existing water lines were conflict free, my team dug potholes before digging. I authorized my team to commence digging once I had determined the path was conflict free.
11. I recall following the HTC flags in parallel for about 3 miles before we cut the HTC cable that jogged across our path. I do not recall there being HTC flags or markers at the Excavation Site where the HTC cable jogged across our path and away from the HTC flags we had been following.
12. I was not at the Excavation Site at the exact moment the cable was cut. Someone from ECI called me and reported that they had just cut an HTC cable, and I returned immediately to the site to inspect the cut. After arriving back onsite to inspect the cut, I called HTC to inform them that I believed my equipment cut one of their cables. I had already spoken with HTC multiple times during my team's excavation near the Hillsboro area because my team had encountered unmarked cables that appeared to be HTC cables. Each time I reported those unmarked cables, HTC reported back that their systems were not reporting an outage.
13. I was onsite off and on the next few days and recall seeing HTC employees several times performing their repair. To the best of my recollection, we buried the HTC repaired line, at HTC's request, about a week after the cut on June 19, 2021.

Dated this 20th of July 2022.



Doug Bowling

Subscribed and sworn to me, a Notary Public, this 20th day of July 2022.



Notary Public

