STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission **TTK Enterprises, LLC** **Damage Prevention Enforcement**	**Case No. DM-23-277**
Public Service Commission **TTK Enterprises, LLC** **Damage Prevention Enforcement**	**Case No. DM-23-304**

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Shelly A. Bauske deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **4th day of April 2024** 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:

Craig R. Chamberlain
TTK Enterprises, LLC
2308 17th Ave NE
Watford City ND 58854
Cert. No. 7022 3330 0000 7993 6354

Trevor Kalberer
Registered Agent for TTK Enterprises, LLC
1109 15th Ave SW
Watford City ND 58854
Cert. No. 7022 3330 0000 7993 6361

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

Subscribed and sworn to before me
this **4th day of April 2024.**

Shelly A Bausk

Geralyn R Schmaltz
Notary Public

SEAL

GERALYN R SCHMALTZ
Notary Public
State of North Dakota
My Commission Expires Oct 5, 2026

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission **TTK Enterprises, LLC** **Damage Prevention Enforcement**	**Case No. DM-23-277**
Public Service Commission **TTK Enterprises, LLC** **Damage Prevention Enforcement**	**Case No. DM-23-304**

ORDER ON CONSENT AGREEMENT

March 27, 2024

Preliminary Statement

On July 27, 2023, and August 30, 2023, the Commission received a North Dakota One-Call Complaint (Complaint) from Kinder Morgan (KM). Each Complaint alleges TTK Enterprises, LLC (TTK) violated North Dakota Century Code (N.D.C.C.) § 49-23-04(1) of the One-Call Excavation Notice System for failing to contact the notification center and provide an excavation or location notice before beginning any excavation.

On August 2, 2023, Staff sent a letter to TTK enclosing the July 27, 2023, Complaint and requested a response by August 25, 2023.

On August 17, 2023, Staff received a response from the TTK.

On September 13, 2023, Staff sent a letter to TTK enclosing the August 30, 2023, Complaint and requested a response by September 29, 2023.

On December 15, 2023, Staff received a response from the TTK.

On March 11, 2024, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy Staff) and TTK was filed for the resolution of the Complaint.

Discussion

TTK Enterprises, LLC is a domestic limited liability company with a principal address of 2308 17th Avenue Northeast, Watford City, North Dakota 58854.

7 DM-23-277 Filed 03/27/2024 Pages: 11
Order on Consent Agreement
Public Service Commission

7 DM-23-304 Filed 03/27/2024 Pages: 11
Order on Consent Agreement
Public Service Commission

Case No. DM-23-277:

On June 19, 2023, TTK provided an excavation notice to NDOC with a work to begin date of June 22, 2023, to grade the slope from Kuhn 3 to the road at 13280 40th Street NW, Watford City, North Dakota. NDOC assigned ticket number 23058445 to the excavation notice with an expiration date of July 13, 2023.

On July 12, 2023, TTK renewed excavation notice 23058445 with NDOC with a work to begin date of July 15, 2023. NDOC assigned ticket number 23073151 to the excavation notice renewal.

On July 13, 2023, TTK began an excavation as defined in N.D.C.C. § 49-23-01(7) for the purpose of installing a four-wire fence. While TTK had multiple excavation notices in the area, this excavation is not encompassed nor identified in any previous excavation notice and there is no evidence of TTK contacting NDOC prior to beginning this excavation.

On July 13, 2023, TTK provided an excavation notice to NDOC with a work begin date of July 18, 2023, to install a fence. NDOC assigned ticket number 23074103 to the excavation notice; however, the ticket was cancelled due to the work already being completed.

Case No. DM-23-304:

On August 28, 2023, TTK began an excavation as defined in N.D.C.C. § 49-23-01(7) for the purpose of supporting the State Highway 85 (Hwy 85) road construction project as a subcontractor working under CSI at the intersection of Hwy 85 and 20th Street NW. There is no evidence of TTK contacting NDOC prior to beginning this excavation.

On September 12, 2023, October 10, 2023, and October 28, 2023, there is evidence of TTK providing/renewing excavation notices to NDOC indicating the type of work to be done was building a highway and the work was being performed for CSI. NDOC assigned ticket numbers 23114064, 23132575, and 23142504 respectively to the excavation notices.

Conclusion

Having investigated the alleged violations, Staff believes TTK violated N.D.C.C. § 49-23-04(1) by failing to provide an excavation or location notice on two separate occurrences.

TTK 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, TTK agrees to be assessed a civil penalty of $1,000. TTK agrees to remit $500 of the $1,000 payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving 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 TTK and Advocacy Staff filed with the Commission on March 11, 2024, is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).

2. TTK is assessed a civil penalty of $1,000 with $500 suspended, on the condition TTK commits no further violation of N.D.C.C. Chapter 49-23 within five years of the date of the Order.

3. TTK shall remit the $500 civil penalty, payable to the North Dakota Public Service Commission, within ten business days of service of this Order.

4. In the event the Commission finds TTK violated N.D.C.C. Chapter 49-23 within five years of the date of the Order, TTK shall remit the suspended portion of the penalty within the time ordered by the Commission, in addition to any fines or penalties imposed for the subsequent violation.

5. For identification of Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), the performance is restitution, remediation, or an amount paid to come into compliance with the law. TTK shall provide the Commission with a U.S. Department of the Treasury Internal Revenue Service Form W-9 for the purpose of the identification requirement of 26 U.S.C. § 162(f)(2)(A)(ii) within ten business days of service of this Order.

PUBLIC SERVICE COMMISSION

Sheri Haugen-Hoffart	Randy Christmann	Julie Fedorchak
Sheri Haugen-Hoffart	**Randy Christmann**	**Julie Fedorchak**
Commissioner	**Chair**	**Commissioner**

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

Public Service Commission **TTK Enterprises, LLC** **Damage Prevention Enforcement**	**Case No. DM-23-277**
Public Service Commission **TTK Enterprises, LLC** **Damage Prevention Enforcement**	**Case No. DM-23-304**

PUBLIC SERVICE COMMISSION, **Complainant,** vs. **TTK Enterprises, LLC** **Respondent.**	))))))))))	**CONSENT AGREEMENT**

This Consent Agreement is entered into by and between TTK Enterprises, LLC (TTK) and the Public Service Commission (Commission) Advocacy Staff (Staff) (together, the Parties) for resolution of Case Nos. DM-23-277 and DM-23-304.

Preliminary Statement

On July 27, 2023, and August 30, 2023, the Commission received a North Dakota One-Call Complaint (Complaint) from Kinder Morgan (KM). Each Complaint alleges TTK violated North Dakota Century Code (N.D.C.C.) § 49-23-04(1) of the One-Call Excavation Notice System for failing to contact the notification center and provide an excavation or location notice before beginning any excavation.

On August 2, 2023, Staff sent a letter to TTK enclosing the July 27, 2023, Complaint and requested a response by August 25, 2023.

On August 17, 2023, Staff received a response from TTK stating that TTK's excavation fell under ticket number 23073151 issued by North Dakota One-Call Notification Center (NDOC). Furthermore, TTK stated that their excavation also fell under the agriculture exemption found in N.D.C.C. § 49-23-01(7)(b) because they were conducting agriculture activities to till, seed, and protect growth of native grass and drive t-posts to a depth of ten inches into the soil to construct a fence.

On September 13, 2023, Staff sent a letter to TTK enclosing the August 30, 2023, Complaint and requested a response by September 29, 2023.

On December 15, 2023, Staff received a response from TTK indicating that TTK was working as a subcontractor to Central Specialties, Inc. (CSI) on a road construction project and that CSI, as the awardee of the project, had a current excavation notice.

Discussion

Case No. DM-23-277:

On June 19, 2023, TTK provided an excavation notice to NDOC with a work to begin date of June 22, 2023, to grade the sloop from Kuhn 3 to the road at 13280 40th Street NW, Watford City, North Dakota. NDOC assigned ticket number 23058445 to the excavation notice with an expiration date of July 13, 2023.

On July 12, 2023, TTK renewed excavation notice 23058445 with NDOC with a work to begin date of July 15, 2023. NDOC assigned ticket number 23073151 to the excavation notice renewal.

On July 13, 2023, TTK began an excavation as defined in N.D.C.C. § 49-23-01(7) for the purpose of installing a four-wire fence. While TTK had multiple excavation notices in the area, this excavation is not encompassed nor identified in any previous excavation notice and there is no evidence of TTK contacting NDOC prior to beginning this excavation.

On July 13, 2023, TTK provided an excavation notice to NDOC with a work begin date of July 18, 2023, to install a fence. NDOC assigned ticket number 23074103 to the excavation notice; however, the ticket was cancelled due to the work already being completed.

Case No. DM-23-304:

On August 28, 2023, TTK began an excavation as defined in N.D.C.C. § 49-23-01(7) for the purpose of supporting the State Highway 85 (Hwy 85) road construction project as a subcontractor working under CSI at the intersection of Hwy 85 and 20th Street NW. There is no evidence of TTK contacting NDOC prior to beginning this excavation.

On September 12, 2023, October 10, 2023, and October 28, 2023, there is evidence of TTK providing/renewing excavation notices to NDOC indicating the type of work to be done was building a highway and the work was being performed for CSI. NDOC assigned ticket numbers 23114064, 23132575, and 23142504 respectively to the excavation notices.

DM-23-277 Alleged Violation:

Excavator Failed to Provide Locate Notice Prior to Beginning Excavation

N.D.C.C. § 49-23-01(7) states in part ""Excavation" means any operation in which earth, rock, or other materials in or below the ground is moved or otherwise displaced by means of hand or power tools, power equipment, or explosives and includes grading, trenching, digging, ditching, dredging, drilling, augering, tunneling, boring, scraping, and cable or pipe plowing and driving. The term does not include:

b. Plowing, cultivating, planting, harvesting, and similar operations in connection with agricultural activities, unless any of these activities disturbs the soil to a depth of eighteen inches [45.72 centimeters] or more."

N.D.C.C. § 49-23-04(1) states "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."

Driving fence posts does not meet the exemption requirements found in N.D.C.C. § 49-23-01(7) because the definition of excavation specifically includes the term driving, and the term driving is not included in the list of exemptions found in N.D.C.C. § 49-23-01(7)(b). Furthermore, the area the fence was being constructed in is not fully included in the ticket number provided by TTK nor is fencing listed under the work to be performed.

Having investigated the alleged violation, Staff believes TTK violated N.D.C.C. § 49-23-04(1) by failing to provide an excavation or location notice before constructing the fence.

DM-23-304 Alleged Violation:

Excavator Failed to Provide Locate Notice Prior to Beginning Excavation

N.D.C.C. § 49-23-04(1) states "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."

N.D.C.C. § 49-23-04(1) requires the excavator to place the excavation notice and TTK was the entity performing the excavation. Furthermore, in September and October, TTK placed their own excavation notices for the Hwy 85 road construction project and indicated on the notices the work was being performed for CSI. This shows that TTK had knowledge that as the subcontractor, they are required to submit their own excavation notices when performing excavations.

Having investigated the alleged violation, Staff believes TTK violated N.D.C.C. § 49-23-04(1) by failing to provide an excavation or location notice before constructing the fence.

Agreement

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

1. TTK violated N.D.C.C. § 49-23-04(1) on two separate occasions by failing to provide an excavation or location notice before conducting an excavation.

2. TTK agrees to be assessed a civil penalty of $1,000.
3. TTK agrees to remit $500 of the $1,000, payable to the North Dakota Public Service Commission within ten (10) business days of service of an Order accepting or approving the Consent Agreement. The remaining $500 civil penalty is suspended on the condition that TTK commits no further violations of N.D.C.C. Chapter 49-23 within five (5) years of the date of the Order.
4. In the event the Commission finds TTK violated N.D.C.C. Chapter 49-23 within five (5) years of the date of the Order, TTK 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.
5. If within five (5) years of the date of the Order there is no subsequent violation of N.D.C.C. Chapter 49-23 by TTK, the remaining $500 penalty is withdrawn.
6. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violations alleged in this case.
7. TTK consents to the filing of the Consent Agreement and an Order and hereby waives any further procedural requirements with respect to the issuance of the Order. Provided the Commission adopts this Consent Agreement and issues an Order consistent with it, TTK 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, including all rights to administrative or judicial hearings or appeals.

8. For purposes of the identification requirement of Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), the performance is restitution, remediation, or an amount paid to come into compliance with the law, TTK agrees to provide the Commission with a U.S. Department of the Treasury Internal Revenue Service Form W-9 for this purpose within ten (10) business days of service of an Order accepting or approving the Consent Agreement.
9. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement and Order.
10. This agreement may be executed in counterparts and duplicate copies, each of which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.
11. The undersigned is authorized to act on behalf of TTK and bind TTK for the purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 11th day of March, 2024

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By: ______________________

Brian Johnson
Special Assistant Attorney General (Bar ID 07937)
Public Service Commission
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480
701-328-2407

Dated this 11th day of March, 2024

TTK Enterprises, LLC

By: ______________________

Craig R. Chamberlain, Chief Financial Officer

Form **W-9**
(Rev. March 2024)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Go to *www.irs.gov/FormW9* for instructions and the latest information.

Give form to the requester. Do not send to the IRS.

Before you begin. For guidance related to the purpose of Form W-9, see *Purpose of Form*, below.

Print or type. See *Specific Instructions* on page 3.

1 Name of entity/individual. An entry is required. (For a sole proprietor or disregarded entity, enter the owner's name on line 1, and enter the business/disregarded entity's name on line 2.)

2 Business name/disregarded entity name, if different from above.

3a Check the appropriate box for federal tax classification of the entity/individual whose name is entered on line 1. Check only **one** of the following seven boxes.

☐ Individual/sole proprietor ☐ C corporation ☐ S corporation ☐ Partnership ☐ Trust/estate

☐ LLC. Enter the tax classification (C = C corporation, S = S corporation, P = Partnership) . . . . ______

Note: Check the "LLC" box above and, in the entry space, enter the appropriate code (C, S, or P) for the tax classification of the LLC, unless it is a disregarded entity. A disregarded entity should instead check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ______

3b If on line 3a you checked "Partnership" or "Trust/estate," or checked "LLC" and entered "P" as its tax classification, and you are providing this form to a partnership, trust, or estate in which you have an ownership interest, check this box if you have any foreign partners, owners, or beneficiaries. See instructions . . . . ☐

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) ______

Exemption from Foreign Account Tax Compliance Act (FATCA) reporting code (if any) ______

(Applies to accounts maintained outside the United States.)

5 Address (number, street, and apt. or suite no.). See instructions.

Requester's name and address (optional)

6 City, state, and ZIP code

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. See also *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

☐☐☐ – ☐☐ – ☐☐☐☐

or

Employer identification number

☐☐ – ☐☐☐☐☐☐☐

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and, generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here **Signature of U.S. person** **Date**

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/FormW9*.

What's New

Line 3a has been modified to clarify how a disregarded entity completes this line. An LLC that is a disregarded entity should check the appropriate box for the tax classification of its owner. Otherwise, it should check the "LLC" box and enter its appropriate tax classification.

New line 3b has been added to this form. A flow-through entity is required to complete this line to indicate that it has direct or indirect foreign partners, owners, or beneficiaries when it provides the Form W-9 to another flow-through entity in which it has an ownership interest. This change is intended to provide a flow-through entity with information regarding the status of its indirect foreign partners, owners, or beneficiaries, so that it can satisfy any applicable reporting requirements. For example, a partnership that has any indirect foreign partners may be required to complete Schedules K-2 and K-3. See the Partnership Instructions for Schedules K-2 and K-3 (Form 1065).

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS is giving you this form because they