

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission  
Lund Oil, Inc.  
Weights & Measures Enforcement

Case No. WM-23-354

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 3<sup>rd</sup> day of May 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:

Nick Liebel  
Lund Oil Inc  
3605 4th Ave NE  
Watford City ND 58854-7001  
Cert. No. 7022 3330 0000 7993 6408

Jayson Lund  
Registered Agent for Lund Oil Inc  
3605 4th Ave NE  
Watford City ND 58854-7001  
Cert. No. 7022 3330 0000 7993 6415

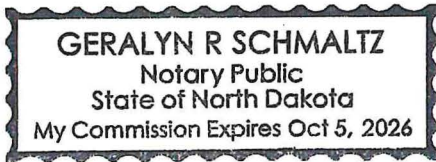
Each address shown is the respective addressee's last reasonably ascertainable post office mail address.

Subscribed and sworn to before me  
this 3<sup>rd</sup> day of May 2024.

Shelly A Bauske

Geralyn R Schmaltz  
Notary Public

SEAL



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

**Public Service Commission**  
**Lund Oil, Inc.**  
**Weights & Measures Enforcement**

**Case No. WM-23-354**

**ORDER ON CONSENT AGREEMENT**

**April 29, 2024**

**Preliminary Statement**

On November 15, 2021, a Commission Weights & Measures Inspector (Inspector) conducted an annual recertification test on two movable platform (platform) scales at Lund Oil, Inc. (Lund), 3605 4th Avenue Northeast, Watford City, North Dakota, 58854-7001.

During the inspection, the Inspector identified one of the platform scales was not weighing accurately and the scale was rejected for repair.

On May 10, 2023, Lund removed the scale from the propane tank refill area.

On August 23, and November 29, 2023, the Inspector noticed the scale was back in the propane tank refill area.

On April 9, 2024, a Consent Agreement between Public Service Commission Advocacy Staff (Staff) and Lund was filed for the resolution of the violation.

**Discussion**

Lund Oil, Inc. is a domestic corporation with a principal address of 3605 4th Avenue Northeast, Watford City, North Dakota 58854-7001.

On November 15, 2021, a Commission Weights & Measures Inspector (Inspector) conducted an annual recertification test on two movable platform (platform) scales at Lund's Watford City location at 3605 4th Avenue Northeast, Watford City, North Dakota, 58854-7001. The scales are located next to the propane refilling station and are used as part of the propane tank refilling operation to calculate the volume of propane in the tank prior to the refilling operation to ensure a customer is only charged for the amount of propane dispensed and to ensure the propane tank is not overfilled.

During the inspection, the Inspector identified one of the platform scales, Serial Number E28118-0228, was missing a poise screw and therefore, was not weighing accurately nor could it be adjusted to weigh accurately without the poise screw. The Inspector rejected the scale and placed a red "Rejected for Repair" tag on the device which states "Commercial use of this device is forbidden until repaired and certified."

After finalizing the inspection, the Inspector reviewed the invoice with Lund's Assistant Manager of Sales/Dispatch, Nick Liebel, and identified the scale issue. The Inspector left a copy of the invoice and test report with Mr. Liebel and Mr. Liebel signed a copy of the invoice for the Inspector's records.

On May 10, 2023, the Inspector returned to conduct the recertification on the platform scales at Lund's Watford City location. The Inspector noted the platform scale that was rejected on November 15, 2021, had not been repaired and was out front next to the propane tank with the red "Rejected for Repair" tag still affixed. The Inspector informed Mr. Liebel the previously rejected platform scale cannot be used commercially and he needed to remove it from the propane tank refill area. Mr. Liebel removed and placed the rejected scale in the back of the shop so it would not be used.

On August 23, 2023, and November 29, 2023, the Inspector was traveling through the area and noticed that on both occasions, the rejected platform scale was back out front in the propane tank refill area indicating it was being used to refill propane tanks and the red "Rejected for Repair" tag was still affixed.

On January 5, 2024, Staff spoke with Mr. Liebel regarding the rejected platform scale. Staff informed Mr. Liebel the scale had been rejected and could not be used commercially. Mr. Liebel said he understood and would remove the scale from the propane refilling area.

On January 23, 2024, Staff spoke with Mr. Liebel. Mr. Liebel said the rejected platform scale had been removed and was no longer being used. When asked why the rejected platform scale had been returned to the front after it had been removed on May 10, 2023, Mr. Liebel stated that an employee had moved it back out front to weigh propane tanks for refilling and use. Mr. Liebel also said they now had the missing parts to repair the scale and requested the Inspector come to Lund's Watford City location to inspect and certify the scale as they are very busy refilling propane tanks and need to use the scale.

On February 20, 2024, the rejected platform scale was repaired and recertified by the Inspector.

N.D.C.C. § 64-02-14 provides that a weighing or measuring device that does not meet applicable design or tolerance requirements must be marked in the manner set by the commission and may not be used in commerce without the consent of the commission.

N.D.C.C. § 64-03-02 provides that it is unlawful for any person to knowingly and fraudulently use a weighing or measuring device, or keep a device for public use, which does not conform to the legal standard of weights and measures of the state.

Furthermore, once a weighing or measuring device has been rejected, the device may not be used in commerce in accordance with N.D. Admin. Code § 69-10-01-05.

Furthermore, a device must be certified by a weights and measures inspector or a registered service person before the device can be used in commerce in accordance with N.D. Admin. Code § 69-10-01-02.

Based upon the investigation, Lund violated N.D.C.C. §§ 64-02-14 and 64-03-02 and N.D. Admin. Code § 69-10-01-05 by knowingly using the rejected platform scale in commerce when refilling propane tanks.

Lund 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, Lund agrees to be assessed a civil penalty of \$750 payable to the North Dakota Public Service Commission within ten (10) business days of service of the Order accepting or approving the Consent Agreement (Order).

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, filed with the Commission on April 9, 2024, between Lund and Advocacy Staff is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement.
2. Lund is assessed a civil penalty of \$750, payable to the North Dakota Public Service Commission within ten (10) business days of service of this Order.

3. 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. Lund 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 (10) days of the issuance of the Order.

**PUBLIC SERVICE COMMISSION**

  
Sheri Haugen-Hoffart  
Commissioner

  
Randy Christmann  
Chair

  
Julie Fedorchak  
Commissioner

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

Public Service Commission  
Lund Oil, Inc.  
Weights & Measures Enforcement

Case No. WM-23-354

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PUBLIC SERVICE COMMISSION,	)	
	)	
Complainant,	)	
	)	
vs.	)	CONSENT AGREEMENT
	)	
Lund Oil, Inc.	)	
	)	
Respondent.	)	

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This Consent Agreement is entered into by and between Lund Oil, Inc. (Lund) and the Public Service Commission (Commission) Advocacy Staff (Staff) (together, the Parties) for resolution of Case No. WM-23-354.

**Discussion**

On November 15, 2021, a Commission Weights & Measures Inspector (Inspector) conducted an annual recertification test on two movable platform (platform) scales at Lund's Watford City location at 3605 4th Avenue Northeast, Watford City, North Dakota, 58854-7001. The scales are located next to the propane refilling station and are used as part of the propane tank refilling operation to calculate the volume of propane in the tank prior to the refilling operation to ensure a customer is only charged for the amount of propane dispensed and to ensuring the propane tank is not overfilled.

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After finalizing the inspection, the Inspector reviewed the invoice with Lund's Assistant Manager of Sales/Dispatch, Nick Liebel, and identified the scale issue. The Inspector left a copy of the invoice and test report with Mr. Liebel and Mr. Liebel signed a copy of the invoice for the Inspector's records.

On May 10, 2023, the Inspector returned to conduct the recertification on the platform scales at Lund's Watford City location. The Inspector noted the platform scale that was rejected on November 15, 2021, had not been repaired and was out front next to the propane tank with the red "Rejected for Repair" tag still affixed. The Inspector informed Mr. Liebel the previously rejected platform scale cannot be used commercially and he needed to remove it from the propane tank refill area. Mr. Liebel removed and placed the rejected scale in the back of the shop so it would not be used.

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commercially. Mr. Liebel said he understood and would remove the scale from the propane refilling area.

On January 23, 2024, Staff spoke with Mr. Liebel. Mr. Liebel said the rejected platform scale had been removed and was no longer being used. When asked why the rejected platform scale had been returned to the front after it had been removed on May 10, 2023, Mr. Liebel stated that an employee had moved it back out front to weigh propane tanks for refilling and use. Mr. Liebel also said they now had the missing parts to repair the scale and requested the Inspector come to Lund's Watford City location to inspect and certify the scale and they are very busy refilling propane tanks and need to use the scale.

On February 20, 2024, the rejected platform scale was repaired and recertified by the Inspector.

**Violation: Using a Rejected Weighing Device in Commerce**

N.D.C.C. § 64-02-14 provides that a weighing or measuring device that does not meet applicable design or tolerance requirements must be marked in the manner set by the commission and may not be used in commerce without the consent of the commission.

N.D.C.C. § 64-03-02 provides that it is unlawful for any person to knowingly and fraudulently use a weighing or measuring device, or keep a device for public use, which does not conform to the legal standard of weights and measures of the state.

Furthermore, once a weighing or measuring device has been rejected, the device may not be used in commerce in accordance with N.D. Admin. Code § 69-10-01-05.



Based upon the investigation, Lund violated N.D.C.C. §§ 64-02-14 and 64-03-02 and N.D. Admin. Code § 69-10-01-05 by knowingly using the rejected platform scale in commerce when refilling propane tanks.

### **Agreement**

Staff considered the mitigating circumstances provided by Lund. 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. Lund violated N.D.C.C. §§ 64-02-14 and 64-03-02 and N.D. Admin. Code § 69-10-01-05 by knowingly using the rejected platform scale in commerce when refilling propane tanks.
2. Lund agrees to be assessed a civil penalty of \$750.
3. Lund agrees to remit the \$750, payable to the North Dakota Public Service Commission within ten (10) business days of service of an Order accepting or approving the Consent Agreement.
4. 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.
5. Lund consents to the filing of the Consent Agreement and 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, Lund 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.

6. 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, Lund 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.
7. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement and Order.
8. 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.
9. The undersigned is authorized to act on behalf of Lund and bind Lund for the purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 9<sup>th</sup> day of April, 2024

PUBLIC SERVICE COMMISSION  
ADVOCACY STAFF - WEIGHTS & MEASURES

By: \_\_\_\_\_

  
John Schuh  
Special Assistant Attorney General (Bar ID 08138)  
Public Service Commission  
600 E. Boulevard Ave., Dept. 408  
Bismarck, ND 58505-0480  
701-328-2421

Dated this 9<sup>th</sup> day of April, 2024

Lund Oil, Inc.

By: \_\_\_\_\_

  
Nick Liebel, Assistant Manager

# Request for Taxpayer Identification Number and Certification

Go to [www.irs.gov/FormW9](http://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.

<b>Print or type.</b>	<b>1</b>	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.)					
	<b>2</b>	Business name/disregarded entity name, if different from above.					
<b>See Specific Instructions on page 3.</b>	<b>3a</b>	Check the appropriate box for federal tax classification of the entity/individual whose name is entered on line 1. Check only <b>one</b> of the following seven boxes.  <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C corporation <input type="checkbox"/> S corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> LLC. Enter the tax classification (C = C corporation, S = S corporation, P = Partnership) . . . . . <b>Note:</b> 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. <input type="checkbox"/> Other (see instructions) _____	<b>4</b>	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.)			
	<b>3b</b>	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 . . . . . <input type="checkbox"/>					
	<b>5</b>	Address (number, street, and apt. or suite no.). See instructions.	Requester's name and address (optional)				
	<b>6</b>	City, state, and ZIP code					
	<b>7</b>	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.

<b>Social security number</b>											
				-							
<b>or</b>											
<b>Employer identification number</b>											

**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.

## Part II Certification

Under penalties of perjury, I certify that:

- 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
- 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
- I am a U.S. citizen or other U.S. person (defined below); and
- 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.

<b>Sign Here</b>	Signature of U.S. person	Date
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## 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](http://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