



Public Service Commission

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ndpsc@nd.gov

Sheri Haugen-Hoffart

Randy Christmann

Jill Kringstad

February 10, 2025

Mr. Steve Kahl
Executive Secretary
North Dakota Public Service Commission
600 E Boulevard Ave Dept 408
Bismarck ND 58505-0480

via Hand Delivery

Re: Case No. DM-24-337
Public Service Commission
BEK Consulting LLC
Damage Prevention Enforcement

Case No. DM-24-339
Public Service Commission
BEK Consulting LLC
Damage Prevention Enforcement

Case No. DM-24-338
Public Service Commission
BEK Consulting LLC
Damage Prevention Enforcement

Case No. DM-24-340
Public Service Commission
BEK Consulting LLC
Damage Prevention Enforcement

Dear Mr. Kahl:

Enclosed is a copy of the Consent Agreement to be filed in the above captioned case.

Best regards,

Brian Johnson
Legal Counsel

Enclosure

5 DM-24-337 Filed 02/10/2025 Pages: 6
Executed Consent Agreement

Public Service Commission

5 DM-24-339 Filed 02/10/2025 Pages: 6
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5 DM-24-338 Filed 02/10/2025 Pages: 6
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5 DM-24-340 Filed 02/10/2025 Pages: 6
Executed Consent Agreement

Public Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

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

Case No. DM-24-337

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

Case No. DM-24-338

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

Case No. DM-24-340

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	
)	
vs.)	CONSENT AGREEMENT
)	
BEK Consulting LLC)	
)	
Respondent.)	

This Consent Agreement is entered into by and between BEK Consulting, LLC (BEK) and the Public Service Commission (Commission) Advocacy Staff (Staff) (together, the Parties) for resolution of Case Nos. DM-24-337, DM-24-338, DM-24-339 and DM-24-340.

Preliminary Statement

Between September 16 and 17, 2024, the Commission received four North Dakota One-Call Complaints (Complaints) from Montana-Dakota Utilities Co. (MDU). The Complaints allege that on four separate occasions, BEK violated North Dakota Century Code (N.D.C.C.) § 49-23-05(5) of the One-Call Excavation Notice System by failing to conduct the excavation in a careful and prudent manner.

On December 12, 2024, Staff received a response from BEK acknowledging that BEK did strike the MDU facilities.

Discussion

Between September 10 and 17, 2024, BEK was installing water, sewer, and storm sewer systems for the city of Dickinson, North Dakota under active one-call tickets and struck and damaged MDU facilities on four separate occasions.

On September 10, 2024, BEK struck and damaged an MDU 1 1/4" natural gas line causing a natural gas outage for two customers.

On September 14, 2024, BEK struck and damaged an MDU three-phase underground electrical conductor causing an electrical outage for seven customers.

On September 16, 2024, BEK struck and damaged an MDU three-phase underground electrical conductor causing an electrical outage for seven customers.

On September 17, 2024, BEK struck and damaged an MDU 1" natural gas line causing a natural gas outage for one customer.

Violation: Failure to Conduct the Excavation in a Careful and Prudent Manner

N.D.C.C. § 49-23-05 states in part that “[t]o avoid damage to and minimize interference with underground facilities in and near the excavation area, a ticket holder shall: . . .5. [c]onduct the excavation in a careful and prudent manner.”

N.D.C.C. § 49-23-01(3) states in part “[c]areful and prudent manner’ means: . . .a. [m]anually excavating within twenty-four inches [60.96 centimeters] of the outer edges of any underground facility on a horizontal plane as located and marked by the owner or operator.”

Having investigated the alleged violations, Staff believes BEK violated N.D.C.C. § 49-23-05(5) by failing to conduct the excavation in a careful and prudent manner four separate times.

Agreement

The Parties engaged in good faith settlement discussions resulting in this Consent Agreement. Having agreed that settlement of these proceedings 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. BEK violated N.D.C.C. § 49-23-05(5) by failing to conduct the excavation in a careful and prudent manner on four separate occasions.
2. BEK agrees to be assessed a civil penalty of \$6,000.

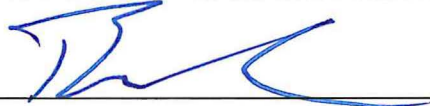
3. BEK agrees to remit the \$6,000 civil penalty, payable to the North Dakota Public Service Commission within ten (10) business days of service of an Order accepting or approving the Consent Agreement.
4. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violations alleged in this case.
5. BEK 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, 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, 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, BEK 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 BEK and bind BEK for the purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 10th day of February, 2025

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 6 day of February, 2025

BEK Consulting LLC

By: _____


Lonnie Kern, Owner
BEK Consulting LLC
P.O. Box 1010
Dickinson, ND 58602-1010