

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**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

**Public Service Commission
BEK Consulting LLC
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Case No. DM-24-339

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

Case No. DM-24-340

ORDER ON CONSENT AGREEMENT

March 5, 2025

Preliminary Statement

BEK Consulting LLC (BEK) is a domestic limited liability company with a principal address of 3180 Highway 22 North, Dickinson, North Dakota 58601 and a mailing address of PO Box 1010, Dickinson, North Dakota 58602-1010.

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.

On February 10, 2025, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy Staff) and BEK was filed for the resolution of the Complaint.

Discussion

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.”

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.

BEK and Advocacy Staff engaged in good faith settlement discussions resulting in a Consent Agreement intended to avoid further administrative proceedings or litigation.

Having considered this matter, the Commission finds the Consent Agreement is reasonable and acceptable. Therefore, the Commission issues the following:

Order

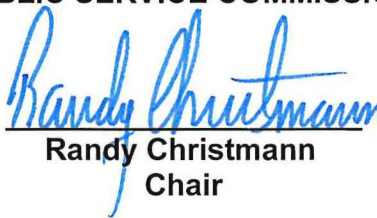
The Commission Orders:

1. The Consent Agreement between BEK and Advocacy Staff filed with the Commission on February 10, 2025, is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. BEK is assessed a civil penalty of \$6,000 (\$1,500 in Case No. DM-24-337, \$1,500 in Case No. DM-24-338, \$1,500 in Case No. DM-24-339, and \$1,500 in Case No. DM-24-340).
3. BEK shall remit the \$6,000 civil penalty (\$1,500 in Case No. DM-24-337, \$1,500 in Case No. DM-24-338, \$1,500 in Case No. DM-24-339, and \$1,500 in Case No. DM-24-340), payable to the North Dakota Public Service Commission, within ten business days of service of this Order.
4. BEK agrees to provide the Commission, within ten (10) business days of service of this Order, a U.S. Department of the Treasury Internal Revenue Service Form W-9 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.

PUBLIC SERVICE COMMISSION



Sheri Haugen-Hoffart
Commissioner



Randy Christmann
Chair



Jill Kringstad
Commissioner

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

Public Service Commission
BEK Consulting LLC
Damage Prevention Enforcement

Case No. DM-24-337

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Public Service Commission
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Case No. DM-24-340

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

CONSENT AGREEMENT

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