

**ND PUBLIC SERVICE COMMISSION  
TESTING & SAFETY DIVISION  
MEMORANDUM**

**TO:** Commissioners Cramer, Clark, and Kalk  
Darrell Nitschke, Executive Secretary  
Illona Jeffcoat-Sacco, Chief Counsel

**FR:** Alan Moch, Director  
Testing & Safety Division

**DT:** September 24, 2009

**RE:** Riley Brothers Construction and ND DOT  
Damage Prevention Enforcement Complaint  
Case No. WM-09-640

On May 24, 2009, I received an emailed complaint from Donna Patrick-Ward, One Call Coordinator from Nustar Pipeline Operating Partnership L.P., 7340 West 21<sup>st</sup> North, Suite 200, Wichita, KS, alleging violation of the ND One Call Law by Riley Brothers Construction, PO Box 535, Morris, MN, contractor for the ND DOT. The complaint included various documentation detailing the Nustar's account of the incident which occurred over Nustar's refined product pipeline in West Fargo, ND. The complaint also included copies of their subsequent contact with Riley Brothers Construction (see attached documents).

The complaint alleges the following:

- ◆ that on April 28<sup>th</sup>, 2009, Nustar Pipeline Operating Partnership L.P. locator, Jeff Pfeifer was driving past the 9<sup>th</sup> Street overpass construction project in West Fargo and discovered that a Riley Brothers Construction employee was performing an excavation over the Nustar pipeline;
- ◆ that Mr. Pfeifer asked the employee if he was aware of a one call ticket that was generated for the work that was being performed;
- ◆ that the employee stated that he was not aware of any;
- ◆ that Mr. Pfeifer then asked him to stop excavating at this location and then proceeded to accurately locate the pipeline with his locator;
- ◆ that Mr. Pfeifer then inquired as to this employee's knowledge of the need for a One Call ticket;

- ♦ that employee stated that he was aware of where Nustar's pipeline was located, but indicated that it might be a good idea to call in to the One Call Center and update a ticket that was generated last year;
- ♦ that Mr. Pfeifer then informed the employee that the North Dakota One Call Laws require an update for this ticket and that it should have been called into the North Dakota One Call Hotline; and
- ♦ that Mr. Pfeifer then also informed the employee that his actions placed Riley Brothers Construction personnel, the general public and the environment at risk.

On August 12, 2009, the Commission adopted its ND Damage Prevention Plan. On August 19, 2009, I contacted Nustar and asked them to re-submit their complaint on a Commission Third Party Damage Complaint form. I received the re-submittal on August 21, 2009. I opened a case (WM-09-640) on September 8, 2009.

After reading the allegations in this complaint, I contacted Chad Olson, ND One Call Board Liaison on August 27, 2009. Chad, in turn, contacted the ND One Call vendor, James Holzer with One Call Concepts, Inc. and asked him to forward copies of all pertinent one call locate tickets generated on the 9<sup>th</sup> Street overpass project in West Fargo. I received an email from Chad on September 3, 2009, with the tickets attached. A review of the locate tickets shows a succession of locate tickets and updates of those locate requests for the 9<sup>th</sup> Street project July 14, 2008 up to October 23, 2008. Ticket number 9010220 shows an update requested on April 28, 2009, with no work to begin until April 30, 2009. The April 28<sup>th</sup> ticket was updated by ticket number 9014259 (no copy attached) on May 6, 2009. No other locate updates were on file as of September 3<sup>rd</sup>.

North Dakota Century Code 49-23-04 states that:

*"Except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice at least forty-eight hours before beginning any excavation, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator. If an operator determines more time is necessary for location, the operator may request a twenty-four-hour extension of the excavation or location notice by notifying the notification center. The notification center shall notify the excavator of the extension. An excavation begins the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice."*

*"An operator, within forty-eight hours, or any extension of that period, after receiving an excavation notice from the center, excluding Saturdays,*

*Sundays, and holidays, unless otherwise agreed to between the excavator and operator, shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator."*

*"After facilities are located by an operator, an excavator shall notify the notification center if:*

- (1) The excavator postpones the excavation commencement time stated in the excavation notice by more than forty-eight hours, or any extension of that period, or cancels the excavation;*
- (2) The markings have been obliterated or obscured;*
- (3) Weather conditions have impeded visibility of the markings;*
- (4) The site shows evidence of recent excavation; or*
- (5) The excavator has other reason to believe the markings are incorrect or missing."*

*"An excavator may not use a location more than ten days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected."*

I am placing this item on the September 29<sup>th</sup> Admin Agenda for discussion.

agm

c: Pat Fahn  
Annette Bendish