

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Summit Energy
Damage Prevention Enforcement

Case No. GS-12-55

CONSENT ORDER

The North Dakota Public Service Commission (Commission) has determined as follows:

1. Summit Energy Services, LLC (Summit Energy) is a North Dakota limited liability company with principal offices at 4952 Hwy 85 PO Box 4440, Williston, ND 58802-4440.
2. Belle Fourche Pipeline Company (Belle Fourche) is a Wyoming corporation with principle offices at 455 N Poplar PO Box 2360, Casper, WY 82602-2360.
3. On January 30, 2012, the Commission received a Third Party Damage Complaint from Belle Fourche. The complaint alleged a violation by Summit Energy of North Dakota Century Code Chapter 49-23.
4. North Dakota Public Service Commission Staff (Staff) conducted an investigation including communication with Summit Energy, Belle Fourche, and North Dakota One Call (One Call).
5. Based on its investigation, Staff determined that on January 9, 2012 Summit Energy personnel began an excavation as defined under North Dakota Century Code section 49-23-01(7) while exploring for scoria in McKenzie County, North Dakota, Lat. 47.674117, Long. -103.659979.
6. North Dakota Century Code § 49-23-04(1) states:

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.

7. North Dakota Century Code section 28-32-22 states:

Unless otherwise prohibited by specific statute or rule, informal disposition may be made of any adjudicative proceeding, or any part or issue thereof, by stipulation, settlement, waiver of hearing, consent order, default, alternative dispute resolution, or other informal disposition, subject to agency approval. Any administrative agency may adopt rules of practice or procedure for informal disposition if such rules do not substantially prejudice the rights of any party. Such rules may establish procedures for converting an administrative matter from one type of proceeding to another type of proceeding.

8. North Dakota Administrative Code section 69-02-04-05 states:

In any proceeding in which the commission is authorized to act after opportunity for hearing, opportunity is afforded by service of notice fixing a reasonable period of time within which any person desiring to be heard may file a protest or request for a hearing. If a protest or request for hearing is not filed within the time provided, the commission may dispose of the matter on the basis of the pleadings, other submittals, and the studies and recommendations of the staff. A party not requesting oral hearing in the party's pleading is deemed to have waived a hearing for the purpose of the decision, but not for the purpose of applying for rehearing with respect to the decision. If a person requests a hearing but does not show good cause, the commission may determine the matter without a hearing.

9. Based on its investigation, Staff concluded that Summit Energy personnel did not provide an excavation or location notice as required by state law at least forty-eight hours before the excavation.

10. Based on its investigation, Staff determined that Summit Energy did not notify Belle Fourche of the excavation and, therefore, there could have been no agreement between Summit Energy and Belle Fourche under North Dakota Century Code Section 49-23-04(1) prior to excavation that would relieve Summit Energy of its obligation to provide excavation notice at least forty-eight hours before the excavation.

11. Staff concluded that the excavation was not being made in a time of emergency under North Dakota Century Code Section 49-23-04(4), allowing the excavator to give notification after the start of the excavation.

12. Summit Energy violated North Dakota Century Code Section 49-23-04 by failing to contact the notification center, North Dakota One Call, and provide an excavation or location notice at least forty-eight hours before beginning its excavation.

13. The Commission is authorized by North Dakota Century Code section 49-07-01.1 to impose a fine of up to \$5,000 for violations of the North Dakota One Call law.

14. Summit Energy acknowledges that at the time of signing the Consent to Entry of Order, it was aware of or had been advised of its rights to a hearing in this matter, to consult an attorney, to present argument to the Commission, and to appeal from any adverse determination after a hearing, and Respondent Summit Energy expressly waives those rights.

15. There are no covenants, promises, undertakings, or understanding other than as specifically set forth in this Order.

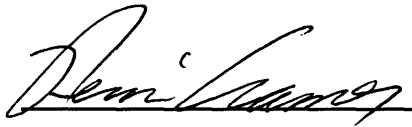
16. For purposes of resolving this matter, without further administrative proceedings, Summit Energy and the Commission have agreed to enter into the following order.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Summit Energy Services, LLC agrees to pay a fine of \$1000 payable to the North Dakota Public Service Commission within ten business days of the effective date of this Order.

DATED this 30th day of MAY, 2012.

PUBLIC SERVICE COMMISSION



**Kevin Cramer
Commissioner**



**Tony Clark
Chairman**



**Brian P. Kalk
Commissioner**

CONSENT TO ENTRY OF ORDER

The undersigned, on behalf of Summit Energy Services, LLC states that he is authorized to act on behalf of Summit Energy Services, LLC and bind Summit Energy Services, LLC for purposes of this Consent Order, that he has read the foregoing Consent Order, that he knows and fully understands its content and effect, that he has been advised of the right to a hearing in this matter, the right to be represented by legal counsel, the right to present evidence and arguments to the Commission, and the right to appeal from an adverse determination after hearing; and that by signing this Consent to Entry of Order he waives those rights in their entirety on behalf of Summit Energy Services, LLC and consents to entry of this Order by the North Dakota Public Service Commission. It is further expressly understood that this Order constitutes the entire

settlement agreement between the parties, there being no other promises or agreements, either express or implied.

DATED this 21 day of MAY, 2012.

Summit Energy Services, LLC

By  _____

Its CHIEF OPERATIVE OFFICER
{TITLE}

APPROVED

DATE: 5-30-12

 _____

MOTION

May 30, 2012

**Public Service Commission
Summit Energy
Damage Prevention Enforcement**

Case No. GS-12-55

I move the Commission adopt the Consent Order in the Public Service Commission's damage prevention enforcement action concerning Summit Energy, Case No. GS-12-55.

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