

Hamre, John G.

From: Lindskog, Travis <Travis.Lindskog@rmcontractors.com>
Sent: Monday, May 05, 2014 5:16 PM
To: Prescott, Julie S.
Subject: RE: consent order - with markup

This looks OK to me. Thanks for the help.

Travis Lindskog
Safety Director
Rocky Mountain Contractors

From: Prescott, Julie S. [<mailto:jprescott@nd.gov>]
Sent: Monday, May 05, 2014 3:55 PM
To: Lindskog, Travis
Subject: consent order - with markup
Importance: High

Hi Travis, attached is the consent order for the Commission's approval with the changes suggested by General Counsel as we discussed. Thanks!

Julie Prescott
Compliance and Competitive Markets Division
ND Public Service Commission
701-328-4188

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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Rocky Mountain Contractors, Inc.
Damage Prevention Enforcement**

Case No. PU-14-138

CONSENT ORDER

May 6, 2014

The North Dakota Public Service Commission (Commission) finds:

Rocky Mountain Contractors, Inc. (Rocky Mountain) is a foreign business corporation with principal offices at 3268 Ocean View Drive, Helena, Montana 59602-1224.

Northwest Communications Cooperative (NCC) is a North Dakota cooperative association with principal offices at 111 Railroad Avenue, Ray, North Dakota 58849-0038.

On March 25, 2014, the Commission received a Third Party Damage Complaint from NCC. The complaint alleged a violation by Rocky Mountain of N.D.C.C. chapter 49-23: One-Call Excavation Notice System.

North Dakota Public Service Commission Staff (Staff) conducted an investigation including communication with NCC, Rocky Mountain, and North Dakota One Call Notification Center (NDOC).

N.D.C.C. § 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.

N.D.C.C. § 49-23-04(3)(g) states:

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

N.D.C.C. § 49-23-05 states:

To avoid damage to and minimize interference with underground facilities in and near the construction area, an excavator shall:

1. Maintain a clearance between an underground facility and the cutting edge or point of any mechanized equipment, considering the known limit of control of the cutting edge or point to avoid damage to the facility.
2. Provide support in a manner approved by the operator for underground facilities in and near the construction area, including backfill operations to protect the facilities. Backfill must be of a material equal to or better in both quality and quantity to the existing backfill.
3. Assume ownership of materials used to mark the facility, use reasonable efforts to maintain markings during excavation, and when possible remove all tangible marking materials used to mark the facility.
4. Assume the cost of excavation to expose the facility unless otherwise indicated by owner of facility.
5. Conduct the excavation in a careful and prudent manner.
6. Properly manage spoil material to prevent shifting or falling material that could damage belowground facilities.

N.D.C.C. § 49-23-06 (1)(a) states:

If any damage occurs to an underground facility or its protective covering, the excavator shall notify the operator as soon as reasonably possible. When the operator receives a damage notice, the operator shall dispatch, as soon as reasonably possible, personnel to the damage area to investigate. If the damage endangers life, health, or property, the excavator responsible for the work shall take immediate action to protect the public and property and to minimize the hazard until arrival of the operator's personnel or until emergency responders have arrived and taken charge of the damaged area.

N.D.C.C. § 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.

N.D.C.C. § 49-07-01.1 states:

Any person who violates any statute, commission order, or commission rule which applies to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, 24-09, 32-25, and 51-05.1, titles 60 and 64, and title 49 except for chapters 49-22 and 49-23, shall, in addition to any other penalty provided, be subject to a civil penalty of not to exceed five thousand dollars. A violation occurring under chapter 49-23, in addition to any other penalty, is subject to a civil penalty not to exceed twenty-five thousand dollars. The commission shall develop policies for the assessment of penalties under chapter 49-23 which will take into consideration the severity of damages and the conduct of the offender. The civil penalty may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.

N.D. Admin. Code § 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.

Investigation Summary

Based on its investigation, Staff determined that on January 6, 2014, Rocky Mountain provided an excavation notice to the NDOC for work to begin on January 8, 2014. The NDOC assigned locate ticket number 14000733 to the excavation notice. Under N.D.C.C. § 49-23-04(3)(g), the expiration date for the locate ticket was January 29, 2014.

Based on its investigation, Staff concluded that on January 18, 2014, Rocky Mountain personnel began an excavation as defined under N.D.C.C. § 49-23-01(7) while trenching for the installation of underground power cable at North Dakota State Highway 40 and 20th Street in the City of Tioga, North Dakota.

Based on its investigation, Staff concluded that a copper telecommunications cable was damaged during this excavation and that the amount of damage was \$745.20. The

operator has been reimbursed for damages. Seven residential customers lost service for approximately two days.

Based on its investigation, Staff concluded that Rocky Mountain violated N.C.C.C. § 49-23-05 by not conducting the excavation so as to maintain a clearance between the underground facility and the cutting edge or point of mechanized equipment so as to avoid damage to the facility and by not conducting the excavation in a careful or prudent manner.

Concurrences

Rocky Mountain and the Commission have agreed to resolve this matter without further administrative proceedings.

In the attached Consent to Entry of Order, Rocky Mountain expressly waives 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.

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

The Commission issues the following:

Order

The Commission orders Rocky Mountain Contractors, Inc. to pay a fine of \$500 payable to the North Dakota Public Service Commission, within ten business days of the effective date of this Order.

PUBLIC SERVICE COMMISSION

Randy Christmann
Commissioner

Brian Kalk
Chairman

Julie Fedorchak
Commissioner

CONSENT TO ENTRY OF ORDER

The undersigned, on behalf of Rocky Mountain Contractors, Inc., is authorized to act on behalf of Rocky Mountain Contractors, Inc., and bind Rocky Mountain Contractors, Inc., for purposes of this Consent Order; has read the Consent Order, knows and fully understands its content and effect; 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 waives those rights in their entirety on behalf of Rocky Mountain Contractors, Inc., and consents to entry of this Order by the North Dakota Public Service Commission to resolve the violation without further administrative proceedings. 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 _____ day of _____ 2014

Rocky Mountain Contractors, Inc.,

By _____

Its _____
{TITLE}