

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



Public Service Commission
ONEOK Rockies Midstream, L.L.C.
Damage Prevention Enforcement

Case No. GS-14-590

CONSENT ORDER

DATED this _____ day of _____ 2014

The North Dakota Public Service Commission (Commission) finds:

ONEOK Rockies Midstream, L.L.C. (ONEOK) is an Oklahoma Limited Liability Company with principal offices at 100 W 5th St, Tulsa, OK, 74103-4279.

Conestoga-Rovers & Associates (CRA) is a New York corporation with principal offices at 2055 Niagara Falls Blvd, #3, Niagara Falls, NY 14304-5702.

Stevens Drilling & Environmental Services, Inc. is a Minnesota corporation with principal offices at 6240 Hwy 12 W, Maple Plain, MN 55359.

On July 14, 2014, the Commission received a ND One-Call Complaint from CRA. The complaint alleged a violation by ONEOK of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

Commission Advocacy Staff (Staff) conducted an investigation including communication with ONEOK, CRA, and North Dakota One Call (NDOC).

North Dakota Century Code section 49-23-04(3)(a) provides:

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.

North Dakota Century Code section 28-32-22 provides:

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.

North Dakota Century Code section 49-07-01.1 provides:

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.

North Dakota Administrative Code section 69-02-04-05 provides:

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 June 20, 2014, Stevens Drilling & Environmental Services, Inc.(subcontractor for CRA) personnel provided an excavation notice to the NDOC Notification Center for work to begin on June 26, 2014 at 2625 feet south and 1500 feet west of the intersection of Hwy 23 and 31st St NW in McKenzie County. The NDOC Notification Center assigned locate ticket number 14085779 to the excavation notice. Under North Dakota Century Code section 49-23-04(3)(a), ONEOK was required to locate and mark or otherwise provide the approximate horizontal location of the underground facilities by June 24, 2014. Unless a 24 hour extension is requested by the operator, which would have extended the deadline to June 25, 2014.

Based on its investigation, Staff concluded that ONEOK performed the locate on June 26, 2014 at 4pm. There is no evidence showing that an extension of the notice period was requested by ONEOK.

Based on its investigation, Staff concluded that there was no agreement between ONEOK and Stevens Drilling & Environmental Services, Inc. under North Dakota Century Code section 49-23-04(3)(a) prior to excavation that would relieve ONEOK of its obligation to provide the locate markings within forty-eight hours of the NDOC notice.

Based on its investigation, Staff concluded that ONEOK violated North Dakota Century Code section 49-23-04(3)(a) by failing to provide the locate markings within forty-eight hours of the NDOC notice.

Concurrences

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

In the attached Consent to Entry of Order, ONEOK 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 ONEOK 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 ONEOK Rockies Midstream, L.L.C (ONEOK). is authorized to act on behalf of ONEOK and bind ONEOK 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 ONEOK, 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 17th day of November 201~~4~~

ONEOK Rockies Midstream, L.L.C.

By Craig Foreande

Its Vice President, Operations
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