

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

Public Service Commission
Buckhorn Energy Services, LLC
Damage Prevention Enforcement

Case No. PU-14-826

Public Service Commission,)
Complainant,)
vs.)
Buckhorn Energy Services, LLC,)
Respondent.)

Complaint

The Public Service Commission of North Dakota, by and through Advocacy Staff (Staff), for its complaint against Buckhorn Energy Services, LLC, alleges and shows the following:

I

Buckhorn Energy Services, LLC (Buckhorn) is a foreign corporation authorized to do business in North Dakota. Its registered agent with the North Dakota Secretary of State is Incorp Services, Inc. 919 S 7th St, Suite 607, Bismarck, ND 58504.

II

Agri Industries, Inc. (Agri) is a foreign corporation authorized to do business in North Dakota.

III

North Dakota Century Code section 49-23-03(3) provides:

An operator shall participate in and share the costs of the one-call excavation notice system by:

- a. Submitting the information required by the notification center to allow the center to notify the operator of excavation activity;

- b. Updating the information provided to the notification center on a timely basis;
- c. Installing and paying for equipment reasonably requested by the notification center to facilitate receipt of notice of excavation from the center;
- d. Paying the costs charged by the notification center on a timely basis; and
- e. Receiving and responding to excavation notices, including emergency notices.

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.

IV

On November 20, 2014, the Commission received a ND One-Call Complaint from Guy Schiessl, with Agri. The complaint alleges a violation by Buckhorn of North Dakota Century Code section 49-23-03(3) of the One-Call Excavation Notice System by failing to provide or update the information provided to the notification center on a timely basis.

V

On November 28, 2014, Commission staff issued a letter informing Buckhorn of Agri's complaint filing, and requested a response by December 12, 2014. As of February 25, 2016, the commission had not received a response.

VI

Based on its investigation Staff determined that Agri personnel provided an excavation notice to the North Dakota One Call Notification Center (NDOC) on October 20, 2014, with work to begin in the area cited in the complaint to begin on October 22, 2014. The NDOC assigned locate ticket number 14194245 to the excavation notice, which indicates the work was being performed to install a water line. Buckhorn Energy Services was not listed as having underground facilities in the area on that locate ticket. In researching the matter further with the NDOC, as of February 25, 2016, Buckhorn still had not registered this underground facility with the NDOC.

As alleged by Agri's complaint, on October 24, 2014, Agri began an excavation as defined in North Dakota Century Code section 49-23-01(7) while performing a water line installation at T154N, R95W, S6 in Williams County, North Dakota. In the process of this excavation, Agri personnel had reason to believe an unmarked underground facility crossed the path of their excavation. They halted their work in the area and were able to determine that the facility likely belonged to Buckhorn. This was confirmed when they contacted Buckhorn, who sent a representative to the site to mark the underground facility.

VII

Buckhorn violated North Dakota Century Code section 49-23-03(3) by failing to provide or update the information provided to the notification center on a timely basis.

VIII

The North Dakota Public Service Commission Damage Prevention Plan provides:

D PROPOSED CIVIL PENALTIES:

1. The following criteria must be used by Commission staff to determine if a civil penalty should be proposed when filing a formal complaint:
 - a. The nature, circumstances and severity of the complaint;
 - b. The degree of suspected fault on the part of the respondent;
 - c. The respondent's history of prior violations or complaints;
 - d. The respondent's ability to pay;
 - e. Any good faith effort by the respondent in attempting to achieve compliance; and
 - f. The effect the penalty may have on the respondent's ability to continue in business.

IX

The Respondent must serve an answer to this complaint upon the Complainant and the Commission within twenty days after service of the complaint, or the Commission may deem the complaint to be admitted. Answers must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure.

Prayer for Relief

Based on the foregoing, Staff seeks the following relief:

1. That the Commission find Buckhorn in violation of North Dakota Century Code ch.49-23 for failing to comply with the One Call requirements enumerated in North Dakota Century Code section 49-23-03(3).
2. That the Commission impose an appropriate civil penalty up to \$25,000, but at least \$6,500.
3. Such other relief that the Commission finds just and proper.

Dated this 22 day of March, 2016


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