

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

Public Service Commission
Continental Resources, Inc.
Damage Prevention Enforcement

Case No. PU-15-699

Public Service Commission,)
Complainant,)
vs.)
Continental Resources, Inc.,)
Respondent.)

Complaint

The Public Service Commission of North Dakota, by and through Advocacy Staff (Staff), for its complaint against Continental Resources, Inc., alleges and shows the following:

I

Continental Resources, Inc. (Continental) is a foreign corporation authorized to do business in North Dakota with offices located at 20 N Broadway, Oklahoma City, OK 73126-9097. Its registered agent with the North Dakota Secretary of State is C T Corporation System, 314 E Thayer Ave, Bismarck, ND 58501-4018.

II

Ernst Trenching, Inc. (Ernst) is a registered North Dakota corporation with offices located at 932 40th St NW, Fargo, ND 58106-9543.

III

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

- a. 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.

- b. For purposes of this section, the approximate horizontal location of the underground facilities is a strip of land two feet [60.96 centimeters] on either side of the underground facilities. This subdivision does not apply to an underground facility to convey water.
- c. When an operator cannot establish the exact location of the underground facility to convey water, the operator shall mark the location as accurately as possible and the excavator may proceed with caution. When excavation operations approach the estimated location of the underground facility to convey water, the exact location of the facility must be determined by safe and acceptable means. The uncovered facility must be supported and protected to prevent damage.
- d. Markers used to designate the approximate location of underground facilities must follow the current color code standard used by the American public works association.

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 October 21, 2015, the Commission received a ND One-Call Complaint from Keith Ernst with Ernst. The complaint alleges a violation by Continental of North Dakota Century Code section 49-23-04(3) of the One-Call Excavation Notice System by failing to locate and mark within 24 inches horizontally the location of its underground facilities.

V

On October 23, 2015, Commission staff issued a letter informing Continental of Ernst's complaint filing, and requested a response by November 9, 2015. As of May 26, 2016, the commission had not received a response from Continental.

VI

Based on its investigation Staff determined that Ernst personnel provided an excavation notice to the North Dakota One Call Notification Center (NDOC) on October 4, 2015, with work to begin in the Northeast corner of the intersection of Rhame

Road(158th Ave SW) and 93rd St SW near Rhame, ND on October 7, 2015. The NDOC assigned locate ticket number 15182020 to the excavation notice, which indicates the work was being performed to install fiber optic telephone service. On October 7, 2015, Continental personnel were not able to accurately locate their underground facilities (45 psi air lines) prior to Ernst's work to begin date and time. Due to safety concerns and Continental's unwillingness to provide accurate location marks within 24 inches horizontally as required by North Dakota Century Code 49-23-04(3) Ernst decided not to complete their planned excavation.

VII

Continental violated North Dakota Century Code section 49-23-04(3) by failing to locate and mark within 24inches horizontally the location of its underground facilities.

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 Continental 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 49-23-04(3).
2. That the Commission impose an appropriate civil penalty up to \$25,000, but at least \$7500.
3. Such other relief that the Commission finds just and proper.

Dated this 31st day of May, 2016

John M. Schuh (ND Bar ID No. 08138)
Special Assistant Attorney General
600 E. Boulevard Ave.
Bismarck, ND 58505-0480
(701) 328-2421
jschuh@nd.gov
Attorney for Advocacy Staff

and

Victor Schock
Public Utility Analyst
600 E Boulevard Ave – Dept 408
Bismarck, North Dakota 58505-0480
701-328-3397
Public Service Commission Advocacy Staff