

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

Public Service Commission  
Central Specialties, Inc.  
Damage Prevention Enforcement

Case No. PU-15-799

Public Service Commission, )  
Complainant, )  
vs. )  
Central Specialties, Inc., )  
Respondent. )

Complaint

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

I

Central Specialties, Inc. (Central) is a foreign corporation with offices located at 6325 County Road 87 SW, Alexandria, MN 56308-5361. Its registered agent with the North Dakota Secretary of State is Business Filings Incorporated, 314 E Thayer Ave, Bismarck, ND 58501-4018.

II

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

III

North Dakota Century Code section 49-23-04(1) provides:

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.

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

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.

North Dakota Century Code section 49-23-05 provides:

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.

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 December 23, 2015, the Commission received a ND One-Call Complaint from Kent Kahl from WBI. The complaint alleges a violation by Central of North Dakota Century Code section 49-23-04(3)(g) of the One-Call Excavation Notice System by

failing to renew excavation or location notice prior to the expiration of the twenty one day ticket period.

## V

On December 29, 2015, Commission staff issued a letter informing Central of WBI's complaint filing, and requested a response by January 13, 2016. Central's January 5, 2016 response asserted that Central will be sending a check to WBI in the amount of \$41,261.50 for the damages to their pipeline.

## VI

As alleged by WBI's complaint, on November 3, 2014, Central began an excavation as defined in North Dakota Century Code section 49-23-01(7) while performing road reconstruction of Highway 85, approximately 5 miles south of Williston, North Dakota. As a result of this excavation, damage was caused by a Caterpillar D8 bulldozer to WBI's 12 inch natural gas transmission line. WBI alleges that the cost to repair its facilities was approximately \$41,261.50. The line had to be taken out of service for approximately 10 hours and 12 minutes in order to repair the damage.

## VII

Based on its investigation Staff determined that Central personnel provided an excavation notice to the North Dakota One Call Notification Center (NDOC) on October 2, 2014, with work to begin in the area cited in the complaint to begin on October 6, 2014. The NDOC assigned locate ticket number 14179562 to the excavation notice, which indicates the work was being performed as road reconstruction. Under North Dakota Century Code section 49-23-04(3)(g), the expiration date for the locate ticket is

October 27, 2014. The excavation on November 3, 2014 occurred 7 days after the expiration date of the locate ticket. Central notified WBI of the damage on November 3, 2014. 3 customers were affected with an outage of 10 hours. WBI has been reimbursed for cost to of the damages from the excavation.

Based on its investigation, Staff concluded that there was no agreement between Central and WBI under North Dakota Century Code section 49-23-04(1) prior to excavation that would relieve Central of its obligation to provide excavation notice at least forty-eight hours before the excavation.

Based on its investigation, 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.

## VIII

Central violated North Dakota Century Code section 49-23-04(1) by failing to provide an excavation notice to the NDOC Notification Center at least forty-eight hours before beginning its excavation.

## IX

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.

X

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 [respondent] 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(1).
2. That the Commission impose an appropriate civil penalty up to \$25,000, but at least \$22,600.
3. Such other relief that the Commission finds just and proper.

Dated this 15th day of April, 2016



John M. Schuh (ND Bar ID No. 08138)  
Special Assistant Attorney General  
600 E Boulevard Ave – Dept 408  
Bismarck, North Dakota 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