

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Carstensen Contracting, Inc.
Damage Prevention Enforcement**

Case No. PU-18-305

**Public Service Commission
Carstensen Contracting, Inc.
Damage Prevention Enforcement**

Case No. PU-19-210

ORDER ON CONSENT AGREEMENT

October 22, 2019

Preliminary Statement

On August 14, 2018, the Commission received a N.D. One-Call Complaint from ONEOK Rockies Midstream, L.L.C. (ONEOK) alleging a violation by Carstensen Contracting, Inc. (Carstensen) of North Dakota Century Code section 49-23-05(5), Case No. PU-18-305.

On August 15, 2018, the Commission sent a letter to Carstensen enclosing the August 14, 2018 N.D. One-Call Complaint and providing until August 30, 2018, for a response.

On June 27, 2019, the Commission received a N.D. One-Call Complaint from ONEOK alleging a violation by Carstensen of North Dakota Century Code section 49-23-04(1), Case No. PU-19-210.

On June 28, 2019, the Commission sent a letter to Carstensen enclosing the June 27, 2019 N.D. One-Call Complaint and providing until July 15, 2019, for a response.

On July 26, 2019, Carstensen filed a response, and on July 29, 2019, filed a supplemental response in Case No. PU-19-210.

On September 12, 2019, a Consent Agreement, between Staff and Carstensen was filed for the resolution of the N.D. One-Call Complaints in Case No. PU-18-305 and Case No. PU-19-210.

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Order on Consent Agreement

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8 **PU-18-305** Filed: 10/22/2019 Pages: 7
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Public Service Commission

Discussion

Carstensen is a foreign corporation under the name Carstensen Contracting, Inc. with a principal address of 800 East Quartzite St., Dell Rapids, S.D., 57022-1818.

In Case No. PU-18-305, ONEOK alleges a violation by Carstensen of North Dakota Century Code section 49-23-05(5) for failure to conduct an excavation in a careful and prudent manner. The complaint alleges that Carstensen failed to conduct the excavation in a careful and prudent manner and hit an abandoned underground facility. ONEOK did not specify the monetary damage to the facility.

North Dakota Century Code section 49-23-05(5) provides that, to avoid damage and to minimize interference with underground facilities, a ticket holder shall "[c]onduct the excavation in a careful and prudent manner."

Having investigated the alleged violation in Case No. PU-18-305, Advocacy Staff (Staff) concluded that Carstensen violated North Dakota Century Code section 49-23-05(5).

In Case No. PU-19-210, ONEOK alleges a violation by Carstensen violated North Dakota Century Code section 49-23-04(1) for failure to contact the notification center and provide an excavation or location notice before beginning an excavation. During its excavation, Carstensen struck an underground facility causing an unspecified amount of damage. ONEOK did not indicate the excavation led to any injuries.

North Dakota Century Code section 49-23-04(1) provides that "[e]xcept in an emergency, an excavator shall contact the notification center and provide an excavation or location notice before beginning an excavation."

Having investigated the alleged violation in Case No. PU-19-210, Staff concluded that Carstensen violated North Dakota Century Code section 49-23-04(1).

In its May 31, 2017 Order on Consent Agreement in Case No. PU-15-571, the Commission approved a Consent Agreement between Carstensen and Staff. In that decision, the Commission suspended a \$5,000 civil penalty on condition that Carstensen commit no further violations of the North Dakota One Call Law within five years of the date of the Order approving the Consent Agreement. The violations from Case No. PU-18-305 and Case No. PU-19-210 occurred within five years of the May 31, 2017 Order on Consent Agreement in Case No. PU-15-571.

Carstensen and Staff engaged in good faith settlement discussions resulting in a Consent Agreement intended to avoid further administrative proceedings or litigation.

Under the Consent Agreement, Carstensen agrees to be assessed a civil penalty

of \$2,600 in Case No. PU-18-305, a civil penalty of \$500 in Case No. PU-19-210, and a civil penalty of \$5,000 that was conditionally suspended in Case No. PU-15-571, payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving the Consent Agreement.

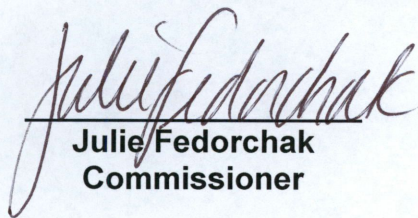
Having considered this matter, the Commission finds the Consent Agreement filed on September 12, 2019, is reasonable and acceptable. Therefore, the Commission issues the following:

Order

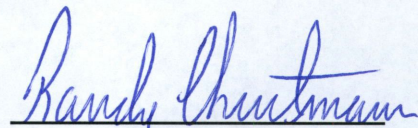
The Commission Orders:

1. The Consent Agreement between Carstensen and Staff, filed September 12, 2019, is approved. A copy of the Consent Agreement is attached to and made a part of the Order.
2. Carstensen is assessed a civil penalty \$2,600 in Case No. PU-18-305. Carstensen shall remit the \$2,600, payable to the North Dakota Public Service Commission within ten business days of service of the Order.
3. Carstensen is assessed a civil penalty \$500 in Case No. PU-19-210. Carstensen shall remit the \$500, payable to the North Dakota Public Service Commission within ten business days of service of the Order.
4. Carstensen is assessed a civil penalty of \$5,000 that was conditionally suspended in Case No. PU-15-571 payable to the North Dakota Public Service Commission within ten business days of service of the Order.

PUBLIC SERVICE COMMISSION


Julie Fedorchak
Commissioner


Brian Kroshus
Chairman


Randy Christmann
Commissioner

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	Case No. PU-18-305
)	PU-19-210
vs.)	
)	CONSENT AGREEMENT
Carstensen Contracting, Inc.,)	
)	
Respondent .)	

Preliminary Statement

This Consent Agreement is entered into by and between Carstensen Contracting, Inc. (Carstensen) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket Nos. PU-18-305 and PU-19-210.

Case No. PU-18-305: On August 14, 2018, the Commission received a ND One-Call Complaint from ONEOK Rockies Midstream (ONEOK). The complaint alleged a violation by Carstensen of North Dakota Century Code section 49-23-05(5) for failure to conduct the excavation in a careful and prudent manner.

Case No. PU-19-210: On June 27, 2019, the Commission received a ND One-Call Complaint from ONEOK. The complaint alleged a violation by Carstensen of North Dakota Century Code section 49-23-04(1) for failure to contact the notification center and provide an excavation or location notice before beginning any excavation.

North Dakota Century Code section 49-23-05(5) provides that to avoid damage and to minimize interference a ticket holder shall "Conduct the excavation in a careful and prudent manner."

North Dakota Century Code section 49-23-04(1) provides that "Except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice before beginning any excavation."

Having investigated the alleged violations, Staff believes that Carstensen violated North Dakota Century Code section 49-23-05(5) in Case No. PU-18-305 and section 49-23-04(1) in Case No. PU-19-210. (Cases PU-18-305 and PU-19-210 are collectively referred to as the "Cases.")

Carstensen and Staff engaged in good faith settlement discussions resulting in this Consent Agreement. Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and that entry of this Consent Agreement is the most appropriate means of resolving this administrative action, Staff and Carstensen agree to the following, subject to the approval and acceptance of the Commission:

1. Carstensen violated North Dakota Century Code section 49-23-05(5) in Case No. PU-18-305 by failing to conduct the excavation in a careful and prudent manner.
2. Carstensen violated North Dakota Century Code section 49-23-04(1) in Case No. PU-19-210 by failing to contact the notification center and provide an excavation or location notice before beginning any excavation.
3. Carstensen agrees to be assessed a civil penalty of \$2,600 in Case No. PU-18-305 and \$500 in Case No. PU-19-210 for a total of \$3,100, payable to the North

Dakota Public Service Commission within ten business days of service of an Order accepting or approving the Consent Agreement. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violations alleged in the Cases.

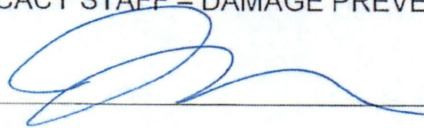
4. The violations from Case Nos. PU-18-305 and PU-19-210 occurred within five years of the May 31, 2017 Order on Consent Agreement from Case No. PU-15-571.
5. Pursuant to the Consent Agreement and Order on Consent Agreement from Case No. PU-15-571, Carstensen must remit the suspended portion of the penalty in the amount of \$5,000. The \$5,000, payable to the North Dakota Public Service Commission is due within ten business days of service of an Order.
6. Carstensen consents to the filing of the Consent Agreement and an Order in the Cases and hereby waives any further procedural requirements with respect to the Order's issuance. Provided the Public Service Commission adopts this Consent Agreement and issues an Order consistent with it, Carstensen understands and agrees in the Cases to waive all rights to contest the violations, the right to be represented by counsel, the right to present evidence and arguments to the Commission, the right to cross examine witnesses, or contest the validity of this Consent Agreement and Order Adopting this Consent Agreement, including all rights to administrative or judicial hearings or appeals.
7. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Agreement and Order.

8. This agreement may be executed in counterparts and duplicate copies, each which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.
9. The undersigned is authorized to act on behalf of Carstensen and bind Carstensen for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 12th day of September, 2019

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By: _____

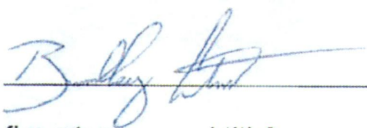

John M. Schuh
Advocacy Counsel
12th Floor, Dept. 408
600 Boulevard Ave.
Bismarck, ND 58505-0480

Dated this 12th day of September, 2019

Carstensen Contracting, Inc.

By: _____

{insert name and title}


BRAD CARSTENSEN
Vice President
800 E Quartzite St.
Dell Rapids, SD 57022