

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Oakland Construction, Inc.
Damage Prevention Enforcement

Case No. PU-19-219

ORDER ON CONSENT AGREEMENT

October 22, 2019

Preliminary Statement

On July 3, 2019, the Commission received a N.D. One-Call Complaint (Complaint) from Kinder Morgan, Inc. (Kinder Morgan) alleging a violation by Oakland Construction, Inc. (Oakland) of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

On July 3, 2019, the Commission sent a letter to Oakland enclosing the Complaint.

On July 17, 2019, Oakland filed a response to the Complaint.

On September 24, 2019, a Consent Agreement, between Public Service Commission Advocacy Staff (Staff) and Oakland was filed for the resolution of the Complaint.

Discussion

Oakland Construction, Inc. is a foreign corporation with principal address of 15341 31st Street Northwest, Cartwright, ND 58838-9641.

Kinder Morgan alleges a violation by Oakland of North Dakota Century Code section 49-23-04(1) for failure to provide excavation or location notice at least 48 hours before beginning an excavation. The Complaint indicated that, for an excavation project to install a fiber optic line, the contractor failed to contact the One-Call notification center to request underground facility locates. The Complaint indicated no damage to an underground facility.

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 any excavation. An excavation begins the first time

excavation occurs in an area that was not previously identified by the excavator in an excavation notice.”

As a result of its investigation, Staff concluded that Oakland failed to provide an excavation or location notice at least 48 hours before beginning an excavation and that Oakland violated North Dakota Century Code section 49-23-04(1).

Oakland admitted to the violation in its letter filed July 17, 2019, and did not state that the excavation was for an emergency purpose

Oakland 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, Oakland agrees to be assessed a civil penalty of \$500 with \$250 suspended on condition that Oakland commit no further violations of the North Dakota One Call Law (North Dakota Century Code Chapter 49-23) within five years after the date of this Order. Oakland will make \$250 payable to the North Dakota Public Service Commission within ten business days of service of this Order.

Having considered this matter, the Commission finds the Consent Agreement filed on September 24, 2019, is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Consent Agreement of Oakland and Staff, filed September 24, 2019, is approved. A copy of the Consent Agreement is attached to and made a part of the Order.
2. Oakland is assessed a civil penalty of \$500 with \$250 suspended on condition that Oakland commit no further violations of the North Dakota One Call Law (North Dakota Century Code Chapter 49-23) within five years after the date of the Order.
3. In the event the Commission finds Oakland violated the North Dakota One Call Law within five years of the date of the Order, Oakland shall remit the \$250 suspended penalty, within the time ordered by the Commission, in addition to any additional fines or penalties imposed for subsequent violation.
4. If within five years of the date of the Order there is no subsequent violation of the North Dakota One Call Law by Oakland, the \$250 suspended penalty shall be withdrawn.
5. Oakland shall remit the \$250 civil penalty, 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-19-219
)	
vs.)	
)	CONSENT AGREEMENT
Oakland Construction, Inc.,)	
)	
Respondent .)	

Preliminary Statement

This Consent Agreement is entered into by and between Oakland Construction, Inc. (Oakland) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket No. PU-19-219.

On July 3, 2019, the Commission received a ND One-Call Complaint from Kinder Morgan. The complaint alleged a violation by Oakland of North Dakota Century Code section 49-23-04(1) for failure to provide an excavation or location notice at least 48 hours before beginning any excavation.

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. An excavation begins the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice."

Having investigated the alleged violations, Staff believes that Oakland violated North Dakota Century Code section 49-23-04(1).

Oakland 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 Oakland agree to the following, subject to the approval and acceptance of the Commission:

1. Oakland violated North Dakota Century Code section 49-23-04(1) by failing to provide an excavation or location notice at least 48 hours before beginning any excavation.
2. Oakland agrees to be assessed a civil penalty of \$500. Oakland agrees to remit \$250 of the \$500, payable to the North Dakota Public Service Commission within ten business days of service of an Order. The remaining \$250 civil penalty is suspended on the condition that Oakland commits no further violation of North Dakota Century Code 49-23 within five years of the date of the Order.
3. Oakland consents to the filing of the Consent Agreement and an Order 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, Oakland understands and agrees 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.

4. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Agreement and Order.
5. 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.
6. The undersigned is authorized to act on behalf of Oakland and bind Oakland for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 29th day of September, 2019

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By: _____

Brian Johnson
Advocacy Counsel
12th Floor, Dept. 408
600 Boulevard Ave.
Bismarck, ND 58505-0480

Dated this 19th day of September, 2019

Oakland Construction, Inc.

By: _____

Dean Oakland, Pres.
{insert name and title}