

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Heartland Excavating, LLC
Damage Prevention Enforcement

Case No. PU-19-365

ORDER ON CONSENT AGREEMENT

July 23, 2020

Preliminary Statement

On November 15, 2019, the Commission received a ND One-Call Complaint from Montana-Dakota Utilities Co. (MDU) alleging a violation by Heartland Excavating, LLC (Heartland) of North Dakota Century Code (N.D.C.C.) section 49-23-04(6)(g).

On November 18, 2019, Commission Advocacy Staff (Staff) sent a letter to Heartland enclosing the November 15, 2019 ND One-Call Complaint.

On February 27, 2020, Heartland sent a response to the November 18, 2019 ND One-Call Complaint.

On July 2, 2020, a Consent Agreement, between Staff and Heartland was filed for the resolution of the ND One-Call Complaint.

Discussion

Heartland Excavation, LLC is a North Dakota limited liability company with a principal address of 709 4th St. East, Horace, ND 58047.

MDU alleges a violation by Heartland of N.D.C.C. section 49-23-04(6)(g) for using a location for more than twenty-one days after the planned excavation date.

In November 1, 2019, Heartland personnel began an excavation on an expired locate with all flags and markings missing. As a result, a plastic 2-inch gas main line was hit in Minot, ND.

N.D.C.C. section 49-23-04(6)(g) provides that, “[a]n 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.”

Having investigated the alleged violation, Staff concluded that Heartland violated N.D.C.C. section 49-23-04(6)(g).

Heartland 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, Heartland agrees to be assessed a civil penalty of \$1,600 with \$800 suspended on condition that Heartland commit no further violations of the North Dakota One Call Law (North Dakota Century Code Chapter 49-23) within five years of the date of this Order. Heartland will make \$800 payable to the North Dakota Public Service Commission within ten business days of service of an Order Adopting Consent Agreement (Order).

Having considered this matter, the Commission finds the Consent Agreement filed on July 2, 2020, is reasonable and acceptable. Therefore, the Commission issues the following:

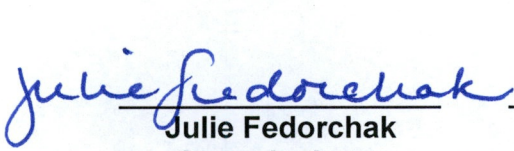
Order

The Commission Orders:

1. The Consent Agreement of Heartland Excavation, LLC and Commission Advocacy Staff, filed on July 2, 2020, is approved. A copy of the Consent Agreement is attached to and made a part of the Order.
2. Heartland is assessed a civil penalty of \$1,600.
3. Heartland shall remit the \$800 civil penalty, payable to the North Dakota Public Service Commission within ten business days of service of the Order. The remaining \$800 civil penalty is suspended on the condition that Heartland commit no further violation of North Dakota Century Code chapter 49-23 within five years of the date of the Order.
4. In the event the Commission finds Heartland violated North Dakota One Call Law within five years of the date of this Order, Heartland shall remit the suspended portion of

the penalty, \$800, within the time ordered by the Commission, and in addition, any additional fines or penalties impose for subsequent violation.

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-19-365
)	
vs.)	
)	CONSENT AGREEMENT
Heartland Excavating, LLC,)	
)	
Respondent .)	

Preliminary Statement

This Consent Agreement is entered into by and between Heartland Excavating, LLC (Heartland) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket No. PU-19-365.

On November 15, 2019, the Commission received a ND One-Call Complaint from Montana-Dakota Utilities (MDU). The complaint alleged a violation by Heartland of North Dakota Century Code section 49-23-04(6)(g) for using a location for more than twenty-one days after the planned excavation date.

North Dakota Century Code section 49-23-04(6)(g) provides that "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."

Having investigated the alleged violations, Staff believes that Heartland violated North Dakota Century Code section 49-23-04(6)(g).

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

1. Heartland violated North Dakota Century Code section 49-23-04(6)(g) by using a location for more than twenty-one days after the planned excavation date.
2. Heartland agrees to be assessed a civil penalty of \$1,600. Heartland agrees to remit \$800 of the \$1,600, payable to the North Dakota Public Service Commission within ten business days of service of an Order Adopting Consent Agreement (Order). The remaining \$800 civil penalty is suspended on the condition that Heartland commits no further violation of North Dakota Century Code 49-23 within five years of the date of the Order.
3. Heartland 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, Heartland 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 Heartland and bind Heartland for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 1st day of July, 2020

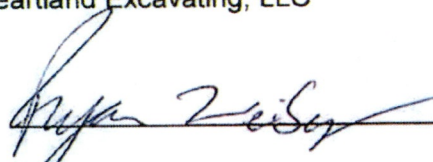
PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By: 

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

Dated this 1st day of July, 2020

Heartland Excavating, LLC

By: 
Ryan Weibye/ Owner