

Memorandum

To: Commissioners Kroshus, Fedorchak and Christmann

From: Victor Schock Public Utility Analyst

VS

Date: August 3, 2020

Re: ND One-Call Complaint
Case No. PU-20-019

On January 10, 2020, a ND One-Call Complaint was received from Ryan Farmer with Kinder Morgan (KM) alleging that Cowboy Crane Service, LLC (CCS) violated North Dakota Century Code Chapter 49-23 One-Call Excavation Notice System law by failing to provide an excavation notice at least 48 hours before beginning an excavation

Staff informed CCS of KM's complaint via a letter on January 22, 2020, requesting a response by February 5, 2020. CCS's January 29, 2020 response asserted that they were not conducting an excavation, but rather making a channel in ice and snow to allow water to drain around a valve. KM had an opportunity to review CCS's response and provided photos from July 15, 2020 of the exact same site to show what they believe to be evidence of CCS's December 2019 excavation.

Staff investigation found that on or about December 27, 2019, CCS began work to cut a channel through ice and snow in order to drain water from a valve at Lat: 48.157944, Lon: -103.379021. Staff believes that the December 28, 2019 and July 15, 2020 pictures show disturbance of a scoria gravel layer covering the site. This would not be defined as an excavation as NDCC Section 49-23 has defined it "Excavation" means any operation in which earth, rock, or other materials in or below the ground is moved or otherwise displaced by means of hand or power tools, power equipment, or explosives and includes grading, trenching, digging, ditching, drilling, augering, tunneling, boring, scraping, and cable or pipe plowing and driving". Since the scoria layer would be on top of the ground rather than in or below it, this would not be considered an excavation.

Based on its investigation staff does not intend to file a formal complaint, recommends that no further action be taken and the case be closed.