

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Tim W. Olson Construction Inc.
Damage Prevention Enforcement

Case No. PU-20-345

ORDER ON CONSENT AGREEMENT

September 22, 2021

Preliminary Statement

On July 20, 2020, the Commission received a ND One-Call Complaint from Kinder Morgan alleging a violation by Tim W. Olson Construction Inc. of North Dakota Century Code (NDCC) chapter 49-23: One-Call Excavation Notice System (Complaint).

On July 22, 2020, the Commission sent a letter to Tim W. Olson Construction Inc. enclosing the July 20, Complaint, requesting a response by August 5, 2020.

On August 5, 2020, Tim W. Olson Construction Inc. responded to the Complaint.

On August 18, 2021, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy Staff) and Tim W. Olson Construction Inc. was filed for the resolution of the Complaint.

Discussion

Tim W. Olson Construction Inc. is a foreign business with principal address of 12525 US HWY 20, Buffalo, SD 57720-0513.

On July 15, 2020, Tim W. Olson Construction Inc. provided an excavation notice to the North Dakota One Call Notification Center (NDOC), with work to begin on July 18, 2020. The NDOC assigned locate ticket number 20089050 to the excavation notice, The work was installation of a fence.

On July 16, 2020, Tim W. Olson Construction Inc. began an excavation as defined in NDCC section 49-23-01(7) two miles north of 87th St SW on the west side of Camp Crook Road near Marmarth, ND. This excavation took place prior to the work to begin date on the ticket. No damage was noted on the ticket as a result of this excavation.

The Complaint alleges that Tim W. Olson Construction Inc. violated NDCC section 49-23-04(4) by beginning an excavation prior to receiving notice that all facilities had been located or cleared.

NDCC section 49-23-04(4) states an “excavator may begin excavation in a location when the excavator has received notice that all facilities have been located or cleared or at the expiration of the location period or extension of the location period.”

Having investigated the alleged violation, Advocacy Staff believes that Tim W. Olson Construction Inc. violated NDCC section 49-23-04(4).

Tim W. Olson Construction Inc. and Advocacy Staff engaged in good faith settlement discussions resulting in a Consent Agreement intended to avoid further administrative proceedings or litigation.

Under the Consent Agreement, Tim W. Olson Construction Inc. agrees to be assessed a civil penalty of \$500, with \$250 suspended on condition that Tim W. Olson Construction Inc. commits no further violation of the North Dakota One-Call Law (North Dakota Century Code chapter 49-23) within five years of the date of an Order accepting the Consent Agreement. Tim W. Olson Construction Inc. will make \$250 payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting the Consent Agreement.

Having considered this matter, the Commission finds the Consent Agreement is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Consent Agreement between Tim W. Olson Construction Inc. and Advocacy Staff, filed with the Commission on August 18, 2021, is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. Tim W. Olson Construction Inc. is assessed a civil penalty of \$500.
3. Tim W. Olson Construction Inc. shall remit \$250 civil penalty, payable to the North Dakota Public Service Commission, within ten business days of service of this Order. The remaining \$250 civil penalty is suspended on condition that Tim W. Olson Construction Inc. commit no further violation of North Dakota Century Code chapter 49-23 within five years of the date of this Order.

4. In the event the Commission finds Tim W. Olson Construction Inc. violated North Dakota One-Call Law within five years of the date of this Order, Tim W. Olson Construction Inc. shall remit the suspended portion of the penalty, \$250, within the time ordered by the Commission and remit any additional fines or penalties imposed for subsequent violation.

PUBLIC SERVICE COMMISSION



Randy Christmann
Commissioner



Julie Fedorchak
Chair



Brian Kroshus
Commissioner

NDOC assigned locate ticket number 20089050 to the excavation notice. The work was for installation of a fence approximately two miles north of 87th St SW on the west side of Camp Crook Road near Marmarth, ND. The expiration date for the ticket was August 8, 2020.

On July 16, 2020, TWOC began an excavation as defined in NDCC section 49-23-01(7) at the location cited in the excavation notice. This excavation took place prior to receiving notice that all facilities had been located or cleared. No damage to an underground facility was noted on the ticket as a result of this excavation.

NDCC section 49-23-04(4) states an "excavator may begin excavation in a location when the excavator has received notice that all facilities have been located or cleared or at the expiration of the location period or extension of the location period."

Having investigated the alleged violation, Staff believes that TWOC violated NDCC section 49-23-04(4).

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

1. TWOC violated NDCC section 49-23-04(4) for beginning an excavation prior to receiving notice that all facilities had been located or cleared.
2. TWOC agrees to be assessed a civil penalty of \$500. TWOC agrees to remit \$250 of the \$500, payable to the North Dakota Public Service Commission within ten

business days of service of an Order accepting or approving the Consent Agreement (Order). The remaining \$250 civil penalty is suspended on the condition that TWOC commits no further violation of NDCC section 49-23 within five years of the date of the Order.

3. In the event the Commission finds TWOC violated the NDCC section 49-23 within five years of the date of the Order, TWOC shall remit the suspended portion of the penalty, within the time ordered by the Commission, in addition to any additional fines or penalties imposed for the subsequent violation.
4. If within five years of the date of the Order there is no subsequent violation of the NDCC section 49-23 by TWOC, the remaining \$250 penalty is withdrawn.
5. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violation alleged in the Case.
6. TWOC 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, TWOC understands and agrees to waive all rights to contest the violation, 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, 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 Consent 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 TWOC and bind TWOC for purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 18 day of August, 2021

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By: _____

Brian Johnson
Special Assistant Attorney General Bar ID 07397
North Dakota Public Service Commission
600 East Boulevard Avenue Dept. 408
Bismarck ND, 58505
701-328-2407

Dated this 18 day of August, 2021

Tim W. Olson Construction, Inc.

By: _____

Name: _____

Sarah Sabo

Sarah Sabo