

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Farmers Union Oil Company of Devils Lake
W & M Enforcement

Case No. PU-20-459

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Shelly A. Bauske deposes and says that:

she is over the age of 18 years and not a party to this action and, on the 7th day of January 2021 she deposited in the United States Mail at Bismarck, North Dakota, one envelope with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

- Order on Consent Agreement

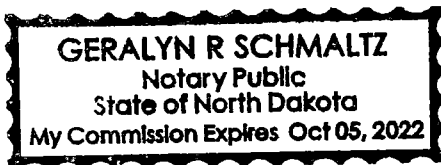
The envelope was addressed as follows:

Thomas Haahr, General Manager
Farmers Union Oil Company of Devils Lake
1803 Highway 2 E
Devils Lake ND 58301-4034
Cert. No. 7019 2280 0000 0693 1310

The address shown is the respective addressee's last reasonably ascertainable post office mail address.

Subscribed and sworn to before me
this 7th day of January 2021.

Shelly A Bauske



Geraldyn R Schmaltz
Notary Public

SEAL

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Farmers Union Oil Company of Devils Lake
W & M Enforcement**

Case No. WM-20-459

ORDER ON CONSENT AGREEMENT

January 6, 2021

Preliminary Statement

In July 2019, a Commission Weights and Measures Inspector (Inspector) identified a "not legal for trade" meter being used commercially to dispense kerosene at a Farmers Union Oil Company of Devils Lake (Farmers) location, a violation of North Dakota Century Code (N.D.C.C.) chapter 64-02: Weighing and Measuring Devices.

On November 4, 2020, the Inspector conducted a follow-up inspection at the Farmers location and noted the same "not legal for trade" meter still in commercial use. During this visit, the Inspector affixed a security tiedown seal to prevent the continued use of the meter.

On November 10, 2020, the Inspector returned to Farmers and noted the previously affixed security tiedown seal had been cut, a violation of North Dakota Administrative Code (N.D. Admin. Code) chapter 69-10-01: Weights and Measures – General.

On December 23, 2020, a Consent Agreement between Public Service Commission Staff (Staff) and Farmers was filed for the resolution of the violation.

Discussion

Farmers Union Oil Company of Devils Lake is a domestic cooperative association with a principal address of 1803 Highway 2 East, Devils Lake, ND 58301-4034.

In July of 2019, an Inspector conducted an inspection at the 600 US-2, Devils Lake, ND 58301 Farmers location. The Inspector identified a "not legal for trade" Fill-Rite 700B pump/meter used to retail kerosene from an above ground storage tank. The Inspector subsequently rejected the Fill-Rite device, affixed a "Non-Commercial Device" seal indicating the device is illegal to use in commerce, and informed Farmers the commercial use of the device must cease immediately.

On November 4, 2020, the Inspector conducted a follow-up inspection at the Farmers location and observed the Fill-Rite device still installed on the kerosene storage tank bearing the "Non-Commercial Device" seal installed in July of 2019. The Inspector spoke with Farmers manager, Mike Kraft, to inquire about the device's status. Mr. Kraft stated the Fill-Rite device was still being used to retail kerosene. The Inspector informed Mr. Kraft this device was previously identified as "not legal for trade" in July 2019 and its continued commercial use was a violation of state laws and rules. The Inspector installed a security tiedown seal on the Fill-Rite 700B device to prevent its further use.

On November 10, 2020, the Inspector returned to Farmers and observed the security tiedown seal that was installed on the Fill-Rite 700B device during the November 4, 2020 inspection was cut and lying on the ground in front of the kerosene tank. The inspector spoke with Mr. Kraft who indicated he was unaware the security tiedown seal was cut.

Farmers later advised Staff the Fill-Rite 700B pump/meter device was removed from the kerosene tank to prevent further use. Additionally, Farmers advised Staff that upon review of surveillance footage, it was determined the security tiedown seal was cut by a customer and not an employee of Farmers.

Pursuant to N.D.C.C. § 64-02-13, "[t]he owner of any weighing or measuring device used in this state is responsible for its accuracy." Furthermore, it is unlawful for any person to knowingly and fraudulently use a weighing or measuring device, or keep a weighing or measuring device for public use, which does not conform to the legal standard of weights and measures of the state. N.D.C.C. § 64-03-02.

Staff concluded that Farmers violated N.D.C.C. § 64-03-02 by continuing to use the "not legal for trade" device in commerce and N.D. Admin. Code § 69-10-01-03 for the removal of the security tiedown seal without Commission approval.

Farmers 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, Farmers agrees to be assessed a civil penalty of \$3,000 made payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting the Consent Agreement (Order).

Having considered this matter, the Commission finds the December 23, 2020 Consent Agreement is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Consent Agreement, filed on December 23, 2020, between Farmers and Staff is approved. A copy of the Consent Agreement is attached to and made a part of this Order.
2. Farmers is assessed a civil penalty of \$3,000, payable to the North Dakota Public Service Commission within ten business days of service of the Order.
3. Farmers agrees that retail kerosene sales will not be made from this location until a "legal for trade" device is installed and placed-into-service by a Registered Service Company authorized by the Commission to test and certify weighing and measuring devices in this state.

PUBLIC SERVICE COMMISSION


Randy Christmann
Commissioner


Julie Fedorchak
Chair


Brian Kroshus
Commissioner

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	Case No. WM-20-459
vs.)	
)	
Farmers Union Oil Company of Devils Lake,)	CONSENT AGREEMENT
)	
Respondent.)	

Preliminary Statement

This Consent Agreement is entered into by and between Farmers Union Oil Company of Devils Lake (Farmers) and the Public Service Commission (Commission) Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket No. WM-20-459.

In July of 2019, a Commission Weights and Measures Inspector (Inspector) conducted an inspection at the 600 US-2, Devils Lake, ND 58301 Farmers location. The Inspector identified a "not legal for trade" Fill-Rite 700B pump/meter used to retail kerosene from an above ground storage tank. The inspector subsequently rejected the Fill-Rite device, affixed a "Non-Commercial Device" seal indicating the device is illegal to use in commerce, and informed Farmers the commercial use of the device must cease immediately.

On November 4, 2020, the Inspector conducted a follow-up inspection at the Farmers location and observed the Fill-Rite device still installed on the kerosene storage

tank bearing the "Non-Commercial Device" seal installed in July of 2019. The Inspector spoke with Farmers manager, Mike Kraft, to inquire about the device's status. Mr. Kraft stated the Fill-Rite device was still being used to retail kerosene. The Inspector informed Mr. Kraft this device was previously identified as "not legal for trade" in July 2019 and its continued commercial use was a violation of state laws and rules. The Inspector installed a security tiedown seal on the Fill-Rite 700B device to prevent its further use.

On November 10, 2020, the Inspector returned to Farmers and observed the security tiedown seal that was installed on the Fill-Rite 700B device during the November 4, 2020 inspection was cut and lying on the ground in front of the kerosene tank. The inspector spoke with Mr. Kraft who indicated he was unaware the security tiedown seal was cut.

Farmers later advised Staff the Fill-Rite 700B pump/meter device was removed from the kerosene tank to prevent further use. Additionally, Farmers advised Staff that upon review of surveillance footage, it was determined the security tiedown seal was cut by a customer and not an employee of Farmers.

Pursuant to N.D.C.C. § 64-02-13, "[t]he owner of any weighing or measuring device used in this state is responsible for its accuracy." Furthermore, it is unlawful for any person to knowingly and fraudulently use a weighing or measuring device, or keep a weighing or measuring device for public use, which does not conform to the legal standard of weights and measures of the state. N.D.C.C. § 64-03-02.

N.D. Admin. Code § 69-10-01-03 provides that it is unlawful to allow an official tag or seal to be removed without commission approval.

Based upon the investigation, Farmers violated N.D.C.C. § 64-03-02 and N.D. Admin. Code § 69-10-01-03.

Staff considered the mitigating circumstances provided by Farmers. Farmers 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 Farmers agree to the following, subject to the approval and acceptance of the Commission:

1. Farmers violated N.D.C.C. § 64-03-02 by continuing to use the Fill-Rite kerosene pump in commercial service from July 2019 through November 12, 2020 and N.D. Admin. Code § 69-10-01-03 for the removal of the security tiedown seal to prevent the use of the device.
2. Farmers agrees to be assessed a civil penalty of \$3,000, 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 case.
3. Farmers agrees that retail kerosene sales will not be made from this location until a "legal for trade" device is installed and placed-into-service by a Registered Service Company authorized by the Commission to test and certify weighing and measuring devices in this state.
4. Farmers consents to the filing of the Consent Agreement and an Order in this case 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, Farmers understands and agrees in this case 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.

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

Dated this 23 day of December, 2020

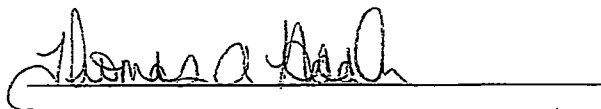
PUBLIC SERVICE COMMISSION
WEIGHTS AND MEASUERS

By: 

Konrad Crockford
Director, Compliance Division
North Dakota Public Service Commission
600 East Boulevard Avenue Dept. 408
Bismarck, ND 58505-0480
701-328-4097

Dated this 23 day of December, 2020

Farmers Union Oil Company of Devils Lake

By: 

Thomas Haahr, General Manager