

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	Case Nos. GS-22-200
)	GS-22-201
vs.)	
)	CONSENT AGREEMENT
Baha Petroleum Consulting Corp.,)	
)	
Respondent.)	

Preliminary Statement

This Consent Agreement is entered into by and between Baha Petroleum Consulting Corp. (Baha) and the Public Service Commission (Commission) Advocacy Staff (Staff) (together, the Parties) for resolution of Case Nos. GS-22-200 and GS-22-201.

On May 23, 2022 and May 26, 2022, the Commission received a ND One-Call Complaint from Kinder Morgan. Each complaint alleged a violation by Baha of North Dakota Century Code (N.D.C.C.) § 49-23-04(4) for starting an excavation prior to receiving a notice that all facilities have been located or cleared.

On June 6, 2022, Commission Staff issued a letter informing Baha of Kinder Morgan’s complaint filings and requested a response by June 22, 2022.

On June 13, 2022, Staff received a response for each complaint from Baha detailing that Baha started each excavation prior to receiving a notice that all facilities had been located or cleared.

Discussion

Case No. GS-22-200:

On May 17, 2022, Baha submitted a ND One-Call Ticket with a work to begin date of May 20, 2022.

On May 18, 2022, Baha began an excavation as defined in N.D.C.C. § 49-23-01(7) while performing vacuum excavating for electrical conduit installation northwest of the intersection of 58th Street Northwest and 119th Avenue Northwest, Epping, North Dakota.

On the evening of May 18, 2022, a Line Patroller for Kinder Morgan arrived at the site to complete the ND One-Call locate and discovered that the excavation was already complete and had crossed an active Kinder Morgan asset. No facilities were damaged.

Case No. GS-22-201:

On May 24, 2022, Baha submitted a ND One-Call with a work to begin date of May 27, 2022.

Baha received notification that the job needed to begin on May 26, 2022. Baha called ND One-Call to discuss the earlier start date and was told that work could start prior to the work begin date on the ND One-Call ticket if the Members Notified on the ND One-Call ticket had cleared or located the facilities. Baha was able to contact all the "Members Notified" with the exception of Kinder Morgan and confirmed that all facilities had been located or cleared.

On May 26, 2022, Baha began an excavation as defined in N.D.C.C. § 49-23-01(7) while performing vacuum excavating for electrical conduit installation near the

intersection of 90th Street Northwest and 112th Avenue Northwest, McGregor, North Dakota.

On May 26, 2022, a Line Patroller for Kinder Morgan arrived at the site to complete the ND One-Call locate and discovered that the excavation was in process and issued a stop work. No facilities were damaged.

N.D.C.C. § 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 Baha violated N.D.C.C. § 49-23-04(4) on two separate occurrences.

Agreement

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

1. Baha Petroleum Consulting Corp. violated N.D.C.C. § 49-23-04(4) on two separate occasions by starting an excavation prior to receiving a notice that all facilities have been located or cleared.
2. Baha Petroleum Consulting Corp. agrees to be assessed a civil penalty of \$500 for each violation for a total of \$1,000.
3. Baha Petroleum Consulting Corp. agrees to remit \$700 (\$300 for the first violation and \$400 for the second violation) of the \$1,000, payable to the North Dakota

Public Service Commission within ten (10) business days of service of an Order accepting or approving the Consent Agreement. The remaining \$300 civil penalty is suspended on the condition that Baha Petroleum Consulting Corp. commits no further violation of N.D.C.C. Chapter 49-23 within five (5) years of the date of the Order.

4. In the event the Commission finds Baha Petroleum Consulting Corp. violated N.D.C.C. Chapter 49-23 within five (5) years of the date of the Order, Baha Petroleum Consulting Corp. 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.
5. If within five (5) years of the date of the Order there is no subsequent violation of N.D.C.C. Chapter 49-23 by Baha Petroleum Consulting Corp., the remaining \$300 penalty is withdrawn.
6. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violation alleged in this case.
7. Baha Petroleum Consulting Corp. consents to the filing of this Consent Agreement and an Order and hereby waives any further procedural requirements with respect to the Order's issuance. Provided the Commission adopts this Consent Agreement and issues an Order consistent with it, Baha Petroleum Consulting Corp. 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, including all rights to administrative or judicial hearings or appeals.

8. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement and Order.
9. 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.
10. The undersigned is authorized to act on behalf of Baha Petroleum Consulting Corp. and bind Baha Petroleum Consulting Corp. for purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 26th day of July, 2022

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 22 day of July, 2022

Baha Petroleum Consulting Corp.

By: _____


Ryan Lee (Operations Manager)