

APPROVED
DATE: 11/29/2023
PJT

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Aznorth LLC
Damage Prevention Enforcement**

Case No. DM-23-229

M O T I O N

November 29, 2023

I move the Commission find the Formal Complaint filed by the North Dakota Public Service Commission Advocacy Staff on November 8, 2023, states a prima facie case, and serve the Complaint on the Respondent in Public Service Commission, Aznorth LLC, Damage Prevention Enforcement, Case No. DM-23-229.

VFS



Public Service Commission
State of North Dakota

COMMISSIONERS

Randy Christmann
Sheri Haugen-Hoffart
Julie Fedorchak

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
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November 8, 2023

Mr. Steve Kahl
Executive Secretary
North Dakota Public Service Commission
600 E Boulevard Ave Dept 408
Bismarck ND 58505-0480

via Hand Delivery

Re: Case No. DM-23-229
Public Service Commission
Aznorth LLC
Damage Prevention Enforcement

Dear Mr. Kahl:

Enclosed is a copy of the Complaint to be filed in the above captioned case.

Best regards,

Brian Johnson
Legal Counsel

Enclosure

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

**Public Service Commission
Aznorth LLC
Damage Prevention Enforcement**

Case No. DM-23-229

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	
)	
vs.)	COMPLAINT
)	
)	
Aznorth LLC,)	
)	
Respondent.)	

The North Dakota Public Service Commission (Commission), by and through Advocacy Staff (Staff), for its complaint against Aznorth LLC alleges and shows the following:

I

Aznorth LLC (Aznorth) is a Limited Liability Company with offices located at 306 Tubman Street, Bainville, Montana, 53212, and a registered agent address of Daniel G. Smith, 2202 5th Avenue, Watford City, North Dakota, 58854.

II

ONEOK Rockies Midstream, L.L.C. (ONEOK) is a Foreign Limited Liability Company authorized to do business in North Dakota.

III

North Dakota Century Code (N.D.C.C.) § 49-23-04(1) provides:

Except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice before beginning any excavation. An excavation begins the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice.

N.D.C.C. § 49-23-06(1)(a) provides:

If any damage occurs to an underground facility or its protective covering, the excavator shall notify the operator as soon as reasonably possible. When the operator receives a damage notice, the operator shall dispatch, as soon as reasonably possible, personnel to the damage area to investigate. If the damage results in the escape of flammable, toxic, or corrosive gas or liquid, the excavator shall:

- (1) Call 911 immediately; and
- (2) Notify the pipeline operator immediately.

N.D.C.C. § 28-32-22 provides:

Unless otherwise prohibited by specific statute or rule, informal disposition may be made of any adjudicative proceeding, or any part or issue thereof, by stipulation, settlement, waiver of hearing, consent order, default, alternative dispute resolution, or other informal disposition, subject to agency approval. Any administrative agency may adopt rules of practice or procedure for informal disposition if such rules do not substantially prejudice the rights of any party. Such rules may establish procedures for converting an administrative matter from one type of proceeding to another type of proceeding.

N.D.C.C. § 49-07-01.1 provides:

Any person who violates any statute, commission order, or commission rule which applies to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, 24-09, 32-25, and 51-05.1, titles 60 and 64, and title 49 except for chapters 49-22, 49-22.1, and 49-23, in addition to any other penalty provided, is subject to a civil penalty of not to exceed five thousand dollars. A violation occurring under chapter 49-23, in addition to any other penalty, is subject to a civil penalty not to exceed twenty-five thousand dollars. The commission shall develop policies for the assessment of penalties under chapter 49-23 which will take into consideration the severity of damages and the conduct of the offender. The civil penalty may be compromised by the commission. The amount of the

penalty when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.

North Dakota Administrative Code § 69-02-04-05 provides:

In any proceeding in which the commission is authorized to act after opportunity for hearing, opportunity is afforded by service of notice fixing a reasonable period of time within which any person desiring to be heard may file a protest or request for a hearing. If a protest or request for hearing is not filed within the time provided, the commission may dispose of the matter on the basis of the pleadings, other submittals, and the studies and recommendations of the staff. A party not requesting oral hearing in the party's pleading is deemed to have waived a hearing for the purpose of the decision, but not for the purpose of applying for rehearing with respect to the decision. If a person requests a hearing but does not show good cause, the commission may determine the matter without a hearing.

IV

On June 19, 2023, the Commission received a North Dakota One-Call Complaint (Complaint) from ONEOK. The Complaint alleges Aznorth violated N.D.C.C. § 49-23-04(1) of the One-Call Excavation Notice System by failing to contact the notification center and provide an excavation or location notice before beginning any excavation. Furthermore, Aznorth's failure resulted in damage to a six-inch gas gathering line causing a release.

V

On June 20, 2023, Staff issued a letter informing Aznorth of ONEOK's complaint filing, and requested a response by July 14, 2023, attached as Exhibit 1. Additionally, Staff spoke with Joe Eastes via telephone on July 24, 2023, and again on October 24, 2023, in which Mr. Eastes acknowledged that Aznorth was in receipt of the Complaint and that a response would be sent right away. Additionally, Staff followed up the October 24, 2023, conversation with an email. As of November 6, 2023, Aznorth has not responded to the June 20, 2023, letter.

VI

As alleged by ONEOK's complaint, on June 13, 2023, Aznorth began an excavation as defined in N.D.C.C. § 49-23-01(7) for a residential septic system at latitude 48.114291, longitude -103.737153. There is no evidence of Aznorth contacting the North Dakota One-Call Notification Center (NDOC) prior to beginning this excavation. During the excavation, Aznorth struck ONEOK's six-inch poly Davidson #1 gas gathering line causing a release. Aznorth notified ONEOK of the strike at 3:15 pm. ONEOK representatives were onsite at 3:29 pm and locked out all wells and closed the block valve to isolate the line by 3:40 pm. Four customers were affected, and the estimated value of the damage was \$18,155.

VII

On October 19, 2023, ONEOK provided the final cost of the damage, \$11,235. To the best of Staff's knowledge, this has not been paid.

VIII

On November 2, 2023, Staff contacted the Williston Police Department (Williston PD) located in Williston, North Dakota. Williston PD provides 911 services to Williams County. There is no evidence of Aznorth calling 911 to report the release of natural gas.

IX

Aznorth violated N.D.C.C. § 49-23-04(1) by failing to provide an excavation or location notice before beginning any excavation. Furthermore, Aznorth violated N.D.C.C. § 49-23-06(1)(a)((1)) by failing to call 911 when the damage resulted in the release of flammable gas.

X

The Commission Damage Prevention Plan provides:

D PROPOSED CIVIL PENALTIES:

1. The following criteria must be used by Commission staff to determine if a civil penalty should be proposed when filing a formal complaint:
 - a. The nature, circumstances and severity of the complaint;
 - b. The degree of suspected fault on the part of the respondent;
 - c. The respondent's history of prior violations or complaints;
 - d. The respondent's ability to pay;
 - e. Any good faith effort by the respondent in attempting to achieve compliance; and
 - f. The effect the penalty may have on the respondent's ability to continue in business.

XI

The Respondent must serve an answer to this complaint upon the Complainant and the Commission within twenty days after service of the complaint, or the Commission may deem the complaint to be admitted. Answers must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure.

Prayer for Relief

Based on the foregoing, Staff seeks the following relief:

1. The Commission find Aznorth LLC in violation of N.D.C.C. Chapter 49-23 One-Call Excavation Notice System for failing to comply with the one-call requirements enumerated in N.D.C.C. §§ 49-23-04(1) and 49-23-06(1)(a)((1)).
2. The Commission impose an appropriate civil penalty up to \$25,000, but at least \$7,400.
3. Such other relief the Commission finds just and proper.

Dated this 8 day of November, 2023

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By:  _____

Brian Johnson
Special Assistant Attorney General (Bar ID 07937)
Public Service Commission
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480
701-328-2407



ONE-CALL COMPLAINT
PUBLIC SERVICE COMMISSION
SFN 59067 (08/2022)

INSTRUCTIONS: To allege a violation of the One-Call Excavation Notice System (N.D.C.C. Chapter 49-23), complete this form in its entirety.

SECTION I – COMPLAINANT (Individual/entity completing form)

Company/Entity Name (if applicable) ONEOK Rockies Midstream			
Contact Person Alex Holland	Email Address alex.holland@oneok.com	Telephone Number 9185951587	
Mailing Address 100 West Fifth Street	City Tulsa	State OK	Zip Code 74103
Complainant is willing and able to testify on the complaint if matter proceeds to a formal hearing.		<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO

SECTION II – RESPONDENT (Individual/entity who allegedly violated the One-Call law)

Company/Entity Name (if applicable) AZNorth			
Contact Person Joe Eastes	Email Address	Telephone Number 928-978-4255	
Mailing Address PO BOX 152	City BAINVILLE	State MT	Zip Code 59212

SECTION III – ALLEGED VIOLATION

OPERATOR – A person or entity who owns or operates an underground facility (i.e.: natural gas, electric, sewer, etc.).

<input type="checkbox"/> Operator failed to mark or clear underground facility within locate period.	<input type="checkbox"/> Operator failed to mark underground facility within 24 inches horizontally.
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EXCAVATOR – A person or entity who conducts excavation (i.e.: homeowner, property owner, company, etc.).

<input type="checkbox"/> Excavation started prior to underground facility locate.	<input checked="" type="checkbox"/> Excavator failed to provide locate notice prior to beginning excavation.
<input type="checkbox"/> Excavator failed to conduct the excavation in a careful and prudent manner.	<input type="checkbox"/> Excavator failed to renew locate request prior to expiration of the 21-day period.

OTHER – May be issue/concern with One-Call Center or other alleged violation that is not listed under operator or excavator.

Write Issue/Concern: _____

SECTION IV – DESCRIPTION/DAMAGE

Date and Time of Event 6/13/2023 15:15 MDT	Location (Address, City, State / Nearest Intersecting Streets / Lat & Long) 48.114291, -103.737153 Williston, ND	One-Call Ticket Number N/A
Underground Facility Affected <input type="checkbox"/> Electric <input checked="" type="checkbox"/> Gas <input type="checkbox"/> Cable <input type="checkbox"/> Communications <input type="checkbox"/> Water <input type="checkbox"/> Sewer/Storm Water <input type="checkbox"/> Petroleum <input type="checkbox"/> Other _____		
Material & Size of Underground Facility (Poly, Steel, Coated Pipe / Fiberoptic / 2 KW / 1.5 in, 2 in / etc.) 6" poly	Operator(s) Affected ONEOK Rockies Midstream	
Estimated Value of Damage \$18,155	Injuries (List Number, If Any) 0 Fatalities 0 Injuries 0 Hospitalizations	Number of Customers Affected 4
Description of the alleged violation/concern. If more space is required, attach additional page(s). ONEOK Rockies Midstream Operator received call at 3:15pm form Gas Control that a contractor had hit a gathering line. Operators responded to the reported area at 3:29pm to the SW edge of Williston. Operator found that a company installing a residential septic system had hit the 6 poly Davidson #1 line and causing gas only release. Operations had all wells locked out and the block valve to isolate the line at 3:40pm. Operators spoke with Mike Osborn the operator for AZ North Inc and they didn't have a OneCall ticket in place.		

SECTION V – SIGNATURE OF COMPLAINANT

Signature 	Printed Name Alex Holland	Date 6/19/2023
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