

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**Public Service Commission
Cobra Oil & Gas Corporation
Damage Prevention Enforcement**

Case No. DM-23-270

**Public Service Commission
Cobra Oil & Gas Corporation
Damage Prevention Enforcement**

Case No. DM-24-234

ORDER ON CONSENT AGREEMENT

December 18, 2024

Preliminary Statement

Cobra Oil & Gas Corporation (Cobra) is a foreign corporation with a principal address of 2201 Kell Boulevard, Wichita Falls, Texas 76308-1000.

On July 18, 2023, the Commission received a North Dakota One-Call Complaint (Complaint) from Scott Sundhagen alleging a violation on three separate occasions by Cobra of North Dakota Century Code (N.D.C.C.) § 49-23-04(6)(n) for failing to provide positive response to the notification center once it had completed marking the excavation area or determined there are no facilities in the area identified in the ticket. (Case No. DM-23-270)

On October 16, 2023, Cobra provided a response to the Complaint acknowledging that Cobra did not provide positive response.

On June 13, 2024, the Commission received a North Dakota One-Call Complaint (Complaint) from North Dakota Pipeline Company LLC (Enbridge) alleging a violation by Cobra of N.D.C.C. § 49-23-04(1) for failing to contact the notification center and provide an excavation or location notice before beginning an excavation. (Case No. DM-24-234)

On October 9, 2024, Cobra provided a response to the Complaint acknowledging that Cobra failed to place an excavation or location notice before beginning an excavation.

On December 3, 2024, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy Staff) and Cobra was filed for the resolution of the Complaint.

Discussion

Case No. DM-23-270

N.D.C.C. § 49-23-04(6)(n) states “An operator that has completed marking of the excavation area or has determined there are no facilities in the area identified in the ticket shall provide positive response to the notification center in compliance with the notification center's procedures established under subsection 5 for assuring positive response from operators.”

Staff investigated Cobra’s positive response rate over a two-year period. From June 2021 to February 2024, Cobra failed to provide positive response 395 out of 898 times, a 43.8% failure rate.

Since April 2024, Cobra has been working on improving the positive response rate and Cobra is now maintaining a 100% positive response rate.

Case No. DM-24-234

N.D.C.C. § 49-23-04(1) states “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.”

Cobra and Advocacy Staff engaged in good faith settlement discussions resulting in a Consent Agreement intended to avoid further administrative proceedings or litigation.

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 Cobra and Advocacy Staff filed with the Commission on December 3, 2024, is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. Cobra is assessed a civil penalty of \$10,500 (\$10,000 in Case No. DM-23-270 and \$500 in Case No. DM-24-234) with \$5,000 suspended, on the condition Cobra commits no further violation of N.D.C.C. Chapter 49-23 within five years of the date of the Order.
3. Cobra shall remit the \$5,500 civil penalty (\$5,000 in Case No. DM-23-270 and \$500 in Case No. DM-24-234), payable to the North Dakota Public Service Commission, within ten business days of service of this Order.

4. In the event the Commission finds Cobra violated N.D.C.C. Chapter 49-23 within five years of the date of the Order, Cobra shall remit the suspended portion of the penalty within the time ordered by the Commission, in addition to any fines or penalties imposed for the subsequent violation.

5. For identification of Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), the performance is restitution, remediation, or an amount paid to come into compliance with the law. Cobra shall provide the Commission with a U.S. Department of the Treasury Internal Revenue Service Form W-9 for the purpose of the identification requirement of 26 U.S.C. § 162(f)(2)(A)(ii) within ten business days of service of this Order.

PUBLIC SERVICE COMMISSION


Sheri Haugen-Hoffart
Commissioner


Randy Christmann
Chair


Julie Fedorchak
Commissioner

notification center once it had completed marking the excavation area or determined there are no facilities in the area identified in the ticket.

On August 16, 2023, Staff received a response from Cobra acknowledging that Cobra did not provide positive response.

Staff investigated Cobra's positive response rate over a two-year period. From June 2021 to February 2024, Cobra failed to provide positive response 395 out of 898 times, a 43.8% failure rate.

Since April 2024, Cobra worked on improving the positive response rate and Cobra is now maintaining a 100% positive response rate.

Violation: Failure to Provide Positive Response

N.D.C.C. § 49-23-04(6)(n) states "An operator that has completed marking of the excavation area or has determined there are no facilities in the area identified in the ticket shall provide positive response to the notification center in compliance with the notification center's procedures established under subsection 5 for assuring positive response from operators."

Having investigated the alleged violation, Staff believes Cobra violated N.D.C.C. § 49-23-04(6)(n) of the One-Call Excavation Notice System by failing to provide positive response to the notification center once it had completed marking the excavation area or determined there are no facilities in the area identified in the ticket.

Case No. DM-24-234

On June 13, 2024, the Commission received a North Dakota One-Call Complaint (Complaint) from North Dakota Pipeline Company LLC (Enbridge). The Complaint alleges Cobra violated North Dakota Century Code (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 an excavation.

On October 9, 2024, Staff received a response from Cobra acknowledging that Cobra did not place a one-call excavation notice prior to beginning the excavation.

On March 6, 2024, an Enbridge employee was responding to an unrelated one-call excavation notice when they witnessed Cobra conducting an excavation as defined in N.D.C.C. § 49-23-01(7) for the purpose of repairing a line break that occurred at Cobra's tank battery located at latitude 48.53556823, longitude -101.18314232. There is no evidence of Cobra contacting the North Dakota One-Call Notification Center (NDOC) prior to beginning this excavation.

**Violation: Excavator Failed to Provide Locate Notice Prior to Beginning
Excavation**

N.D.C.C. § 49-23-04(1) states "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."

Having investigated the alleged violation, Staff believes Cobra violated N.D.C.C. § 49-23-04(1) by failing to provide an excavation or location notice before beginning any excavation.

Agreement

The Parties engaged in good faith settlement discussions resulting in this Consent Agreement. Having agreed that settlement of these proceedings 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. Cobra violated N.D.C.C. §§ 49-23-04(1) and 49-23-04(6)(n) of the One-Call Excavation Notice System by failing to provide an excavation or location notice before beginning any excavation and by failing to provide positive response to the notification center once it had completed marking the excavation area or determined there are no facilities in the area identified in the ticket.
2. Cobra agrees to be assessed a civil penalty of \$10,500.
3. Cobra agrees to remit \$5,500 of the \$10,000, 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 \$5,000 civil penalty is suspended on the condition that Cobra commits no further violations of N.D.C.C. Chapter 49-23 within five (5) years of the date of the Order.
4. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violations alleged in this case.
5. Cobra consents to the filing of the Consent Agreement and an Order and hereby waives any further procedural requirements with respect to the issuance of the Order. Provided the Commission adopts this Consent Agreement and issues an Order consistent with it, Cobra 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.
6. For purposes of the identification requirement of Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), the performance is restitution, remediation, or an amount paid to come into compliance with the law, Cobra agrees to provide the Commission with a U.S. Department of the Treasury Internal Revenue Service Form W-9 for this purpose within ten (10) business days of service of an Order accepting or approving the Consent Agreement.
 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 of 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 Cobra and bind Cobra for the purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 3rd day of December, 2024

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By: _____

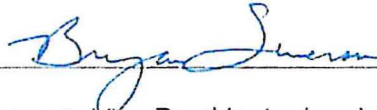


Brian Johnson
Special Assistant Attorney General (Bar ID 07937)
Public Service Commission
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480
701-328-2407

Dated this 2nd day of December, 2024

Cobra Oil & Gas Corporation

By: _____



Bryan Swenson, Vice President – Land
Cobra Oil & Gas Corporation
P.O. Box 8206
Wichita Falls, TX 76307