



Public Service Commission  
State of North Dakota

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March 11, 2024

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-23-277  
Public Service Commission  
TTK Enterprises, LLC  
Damage Prevention Enforcement

Case No. DM-23-304  
Public Service Commission  
TTK Enterprises, LLC  
Damage Prevention Enforcement

Dear Mr. Kahl:

Enclosed is a copy of the Consent Agreement 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  
TTK Enterprises, LLC  
Damage Prevention Enforcement

Case No. DM-23-277

Public Service Commission  
TTK Enterprises, LLC  
Damage Prevention Enforcement

Case No. DM-23-304

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|----------------------------|---|-------------------|
| PUBLIC SERVICE COMMISSION, | ) |                   |
|                            | ) |                   |
| Complainant,               | ) |                   |
|                            | ) |                   |
| vs.                        | ) | CONSENT AGREEMENT |
|                            | ) |                   |
| TTK Enterprises, LLC       | ) |                   |
|                            | ) |                   |
| Respondent.                | ) |                   |

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This Consent Agreement is entered into by and between TTK Enterprises, LLC (TTK) and the Public Service Commission (Commission) Advocacy Staff (Staff) (together, the Parties) for resolution of Case Nos. DM-23-277 and DM-23-304.

**Preliminary Statement**

On July 27, 2023, and August 30, 2023, the Commission received a North Dakota One-Call Complaint (Complaint) from Kinder Morgan (KM). Each Complaint alleges TTK violated North Dakota Century Code (N.D.C.C.) § 49-23-04(1) of the One-Call Excavation Notice System for failing to contact the notification center and provide an excavation or location notice before beginning any excavation.

On August 2, 2023, Staff sent a letter to TTK enclosing the July 27, 2023, Complaint and requested a response by August 25, 2023.

On August 17, 2023, Staff received a response from TTK stating that TTK's excavation fell under ticket number 23073151 issued by North Dakota One-Call Notification Center (NDOC). Furthermore, TTK stated that their excavation also fell under the agriculture exemption found in N.D.C.C. § 49-23-01(7)(b) because they were conducting agriculture activities to till, seed, and protect growth of native grass and drive t-posts to a depth of ten inches into the soil to construct a fence.

On September 13, 2023, Staff sent a letter to TTK enclosing the August 30, 2023, Complaint and requested a response by September 29, 2023.

On December 15, 2023, Staff received a response from TTK indicating that TTK was working as a subcontractor to Central Specialties, Inc. (CSI) on a road construction project and that CSI, as the awardee of the project, had a current excavation notice.

### **Discussion**

#### **Case No. DM-23-277:**

On June 19, 2023, TTK provided an excavation notice to NDOC with a work to begin date of June 22, 2023, to grade the sloop from Kuhn 3 to the road at 13280 40th Street NW, Watford City, North Dakota. NDOC assigned ticket number 23058445 to the excavation notice with an expiration date of July 13, 2023.

On July 12, 2023, TTK renewed excavation notice 23058445 with NDOC with a work to begin date of July 15, 2023. NDOC assigned ticket number 23073151 to the excavation notice renewal.

On July 13, 2023, TTK began an excavation as defined in N.D.C.C. § 49-23-01(7) for the purpose of installing a four-wire fence. While TTK had multiple excavation notices in the area, this excavation is not encompassed nor identified in any previous excavation notice and there is no evidence of TTK contacting NDOC prior to beginning this excavation.

On July 13, 2023, TTK provided an excavation notice to NDOC with a work begin date of July 18, 2023, to install a fence. NDOC assigned ticket number 23074103 to the excavation notice; however, the ticket was cancelled due to the work already being completed.

**Case No. DM-23-304:**

On August 28, 2023, TTK began an excavation as defined in N.D.C.C. § 49-23-01(7) for the purpose of supporting the State Highway 85 (Hwy 85) road construction project as a subcontractor working under CSI at the intersection of Hwy 85 and 20th Street NW. There is no evidence of TTK contacting NDOC prior to beginning this excavation.

On September 12, 2023, October 10, 2023, and October 28, 2023, there is evidence of TTK providing/renewing excavation notices to NDOC indicating the type of work to be done was building a highway and the work was being performed for CSI. NDOC assigned ticket numbers 23114064, 23132575, and 23142504 respectively to the excavation notices.

**DM-23-277 Alleged Violation:**

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

N.D.C.C. § 49-23-01(7) states in part ""Excavation" means any operation in which earth, rock, or other materials in or below the ground is moved or otherwise displaced by means of hand or power tools, power equipment, or explosives and includes grading, trenching, digging, ditching, dredging, drilling, augering, tunneling, boring, scraping, and cable or pipe plowing and driving. The term does not include:

- b. Plowing, cultivating, planting, harvesting, and similar operations in connection with agricultural activities, unless any of these activities disturbs the soil to a depth of eighteen inches [45.72 centimeters] or more."

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."

Driving fence posts does not meet the exemption requirements found in N.D.C.C. § 49-23-01(7) because the definition of excavation specifically includes the term driving, and the term driving is not included in the list of exemptions found in N.D.C.C. § 49-23-01(7)(b). Furthermore, the area the fence was being constructed in is not fully included in the ticket number provided by TTK nor is fencing listed under the work to be performed.

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

### **DM-23-304 Alleged 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."

N.D.C.C. § 49-23-04(1) requires the excavator to place the excavation notice and TTK was the entity performing the excavation. Furthermore, in September and October, TTK placed their own excavation notices for the Hwy 85 road construction project and indicated on the notices the work was being performed for CSI. This shows that TTK had knowledge that as the subcontractor, they are required to submit their own excavation notices when performing excavations.

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

#### **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. TTK violated N.D.C.C. § 49-23-04(1) on two separate occasions by failing to provide an excavation or location notice before conducting an excavation.

2. TTK agrees to be assessed a civil penalty of \$1,000.
3. TTK agrees to remit \$500 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 \$500 civil penalty is suspended on the condition that TTK commits no further violations 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 TTK violated N.D.C.C. Chapter 49-23 within five (5) years of the date of the Order, TTK 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 TTK, the remaining \$500 penalty is withdrawn.
6. 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.
7. TTK 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, TTK 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.

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

Dated this 13<sup>th</sup> day of March, 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 11<sup>th</sup> day of March, 2024

TTK Enterprises, LLC

By: 

Craig R. Chamberlain, Chief Financial Officer