

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Central Specialties, Inc.
Damage Prevention Enforcement**

Case No. DM-23-303

ORDER ON CONSENT AGREEMENT

April 29, 2024

Preliminary Statement

On August 30, 2023, the Commission received a North Dakota One-Call Complaint (Complaint) from Kinder Morgan (KM) alleging a violation by Central Specialties, Inc. (CSI) of North Dakota Century Code (N.D.C.C.) §§ 49-23-04(1) and 49-23-04(6)(g), by continuing to use an excavation notice location for more than twenty-one days and by failing to contact the notification center and provide an excavation or location notice before beginning any excavation.

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

On September 22, 2023, Staff received a response from CSI.

On April 16, 2024, a Consent Agreement between Public Service Commission Advocacy Staff (Advocacy Staff) and CSI was filed for the resolution of the Complaint.

Discussion

Central Specialties, Inc. is a foreign corporation with a principal address of 6325 County Road 87 SW, Alexandria, Minnesota 56308-5361.

On March 14, 2023, CSI provided an excavation notice to the North Dakota One-Call Notification Center (NDOC) with a work begin date of March 17, 2023, for road construction on State Highway 85 (Hwy 85) beginning at the intersection of Hwy 85 and 23rd Street NW and extending south for approximately 3 miles which includes the intersection of Hwy 85 and 21st Street NW. NDOC assigned ticket number 23007965 to the excavation notice.

Between March 17, 2023, and June 29, 2023, CSI renewed/updated the excavation notice with NDOC three additional times with the last excavation notice renewal/update being assigned ticket number 23062910 with an expiration date of July 20, 2023.

On August 25, 2023, at 9:15 PM, KM received notification from NDOC of emergency locate ticket number 23103977 placed by Reservation Telephone Cooperative (RTC) which identified the type of work to be done as “emergency repair of cut fiber optic.” KM dispatched personnel to the location and discovered that CSI had continued an excavation as defined in N.D.C.C. § 49-23-01(7) for the purpose of continuing the Hwy 85 road construction on the east side of Hwy 85 and south of 20th Street NW. Additionally, CSI excavated within 15 feet of KM’s 20-inch high pressure steel natural gas pipeline and struck RTC’s fiber optic line causing approximately \$7,000 in damage, which was paid for by CSI. This excavation occurred 36 days after the excavation notice expired and there is no evidence of CSI contacting NDOC prior to continuing their excavation.

On September 22, 2023, Staff received a response from CSI acknowledging that due to employee turnover, CSI failed to renew their excavation notice and failed to place a new excavation notice with NDOC prior to continuing their excavation.

Conclusion

Having investigated the alleged violations, Advocacy Staff believes that CSI violated N.D.C.C. §§ 49-23-04(1) and 49-23-04(6)(g) by failing to renew/update their excavation notice prior to the expiration of the twenty-one day period and for failing to provide an excavation or location notice before continuing the excavation.

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

Under the Consent Agreement, CSI agrees to be assessed a civil penalty of \$2,000. CSI agrees to remit the \$2,000 civil penalty, payable to the North Dakota Public Service Commission, within ten business days of service of an Order accepting or approving the Consent Agreement.

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 CSI and Advocacy Staff filed with the Commission on April 16, 2024, is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. CSI is assessed a \$2,000 civil penalty.

3. CSI shall remit the \$2,000 civil penalty, payable to the North Dakota Public Service Commission, within ten business days of service of this Order.

4. 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. CSI 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

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

Public Service Commission
Central Specialties, Inc.
Damage Prevention Enforcement

Case No. DM-23-303

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	
)	
vs.)	CONSENT AGREEMENT
)	
)	
Central Specialties, Inc.)	
)	
Respondent.)	

This Consent Agreement is entered into by and between Central Specialties, Inc. (CSI) and the Public Service Commission (Commission) Advocacy Staff (Staff) (together, the Parties) for resolution of Case No. DM-23-303.

Preliminary Statement

On August 30, 2023, the Commission received a North Dakota One-Call Complaint (Complaint) from Kinder Morgan (KM). The Complaint alleges CSI violated N.D.C.C. §§ 49-23-04(1) and 49-23-04(6)(g) of the One-Call Excavation Notice System by continuing to use an excavation notice location for more than twenty-one days and by failing to contact the notification center and provide an excavation or location notice before beginning any excavation. Furthermore, CSI's excavation resulted in damage to a Reservation Telephone Cooperative (RTC) fiberoptic line.

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

On September 22, 2023, Staff received a response from CSI acknowledging that due to employee turnover, CSI failed to renew their excavation notice and failed to place a new excavation notice with the North Dakota One-Call Notification Center (NDOC) prior to continuing their excavation.

Discussion

On March 14, 2023, CSI provided an excavation notice to NDOC with a work begin date of March 17, 2023, for road construction on State Highway 85 (Hwy 85) beginning at the intersection of Hwy 85 and 23rd Street NW and extending south for approximately 3 miles which includes the intersection of Hwy 85 and 21st Street NW. NDOC assigned ticket number 23007965 to the excavation notice.

Between March 17, 2023, and June 29, 2023, CSI renewed/updated the excavation notice with NDOC three additional times with the last excavation notice renewal/update being assigned ticket number 23062910 with an expiration date of July 20, 2023.

On August 25, 2023, at 9:15 PM, KM received notification from NDOC of emergency locate ticket number 23103977 placed by RTC which identified the type of work to be done as "emergency repair of cut fiber optic." KM dispatched personnel to the location and discovered that CSI had continued an excavation as defined in N.D.C.C. § 49-23-01(7) for the purpose of continuing the Hwy 85 road construction on the east side of Hwy 85 and south of 20th Street NW. Additionally, CSI excavated within 15 feet of KM's 20-inch high pressure steel natural gas pipeline and struck RTC's fiberoptic line

causing approximately \$7,000 in damage, which was paid for by CSI. This excavation occurred 36 days after the excavation notice expired and there is no evidence of CSI contacting NDOC prior to continuing their excavation.

Alleged Violation:

Excavator Failed to Renew the Excavation Notice After the Expiration Period &

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(6)(g) states "An excavator may not use a location more than twenty-one days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected."

Having investigated the alleged violation, Staff believes CSI violated N.D.C.C. §§ 49-23-04(1) and 49-23-04(6)(g) by failing to renew/update their excavation notice prior to the expiration of the twenty-one day period and for failing to provide an excavation or location notice before continuing the excavation.

Agreement

While CSI experienced employee turnover leading to the failure to renew/update their excavation notice with NDOC, there was an identical incident which occurred in December 2015 where CSI failed to renew/update an excavation notice after the expiration of the twenty-one day period and subsequently damaged a 12-inch natural gas line causing a release. Taking this into account, 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. CSI violated N.D.C.C. §§ 49-23-04(1) and 49-23-04(6)(g) by failing to renew/update their excavation notice prior to the expiration of the twenty-one day period and for failing to provide an excavation or location notice before continuing the excavation.
2. CSI agrees to be assessed a civil penalty of \$2,000.
3. CSI agrees to remit the \$2,000 civil penalty, payable to the North Dakota Public Service Commission, within ten (10) business days of service of an Order accepting or approving the Consent Agreement.
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. CSI 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, CSI 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, CSI 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 CSI and bind CSI for the purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 16th day of April, 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 16 day of April, 2024

Central Specialties, Inc.

By: 

Ross Larson, Chief Financial Officer