

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Asgard Resources, LLC
Weights & Measures Enforcement

Case No. WM-23-309

ORDER ON CONSENT AGREEMENT

January 4, 2024

Preliminary Statement

On March 23, 2023, the Commission received a complaint alleging the truck scale located at Asgard Resources, LLC (Asgard), 4840 Highway 200, Hazen, North Dakota 58545 was not weighing accurately.

On April 11, 2023, Staff received a Weights & Measures Test Report from Prairie Scale Systems, Inc. (PSS), a North Dakota Registered Service Company, placing-in-service a legal-for-trade Avery Weigh-Tronix (Weigh-Tronix) truck scale at the Asgard Hazen location on April 10, 2023.

On September 15, 2023, Asgard admitted that prior to April 16, 2023, they were using a non-certified scale in commerce, but claimed they did not know it had not been certified and placed-in-service for use in commerce.

On November 17, 2023, a Consent Agreement between Public Service Commission Advocacy Staff (Staff) and Asgard was filed for the resolution of the violation.

Discussion

Asgard Resources, LLC is a domestic limited liability company with a principal address of 1505 North Miller Street Suite 260, Wenatchee, Washington 98801.

On April 17, 2023, a Commission Weights and Measures Inspector (Inspector) conducted a Quality Assurance (QA) inspection at the Asgard Hazen location. The Inspector noted there were two truck scales at this location, the Weigh-Tronix scale and a Rice Lake Surveyor Portable Truck Scale (Rice Lake). The scale indicator for the Rice Lake truck scale had a PSS sticker stating, "SERVICED & TESTED ▪ NON-JURISDICTIONAL" and identified a date of July 2022. The scale indicator for the Weigh-Tronix truck scale had a PSS sticker stating, "TESTED AND APPROVED" and identified a date of April 2023. Additionally, the Inspector spoke with Jared Moore, Asgard Mine Manager, regarding the operation. According to Mr. Moore, the mine began using the Weigh-Tronix truck scale on April 16, 2023. Up until this date, the Rice Lake truck scale

was being used. Mr. Moore added the process for loading trucks is to have empty trucks pull onto the scale to establish a tare weight, and then the truck is loaded with frac sand while still on the scale. Once loading is complete, the gross weight of the truck is subtracted from the tare weight to establish the net weight. Customers place a bulk order with Asgard, and all net weights are tallied until they reach the bulk ordered amount. Once the order is fulfilled, an invoice is sent to the customer for the total amount of frac sand provided.

In June 2023, Staff spoke with PSS regarding the truck scales at the Asgard Hazen location. According to PSS, the Rice Lake truck scale was temporarily installed in July 2022. PSS stated they did not certify and place-in-service this scale because according to the customer, this scale was not being used commercially. PSS stated the Rice Lake truck scale rental agreement with Asgard also indicated the scale was not legal-for-trade. This agreement was signed by Asgard representative Jamey Backus, who is no longer with Asgard. In February 2023, PSS was contacted by Asgard to test and certify the Weigh-Tronix truck scale. According to PSS, Asgard purchased and installed the scale themselves. PSS said there were several problems with the Weigh-Tronix scale foundation that needed to be corrected to comply with North Dakota Laws and Rules before it could be certified and placed-in-service. On April 10, 2023, PSS was able to certify and place-in-service the Weigh-Tronix truck scale.

On September 15, 2023, Staff spoke with Mr. Moore who confirmed the Rice Lake truck scale had been removed from the facility and only the Weigh-Tronix scale was being used. When questioned about his knowledge of the legal status of the Rice Lake truck scale, Mr. Moore said he did not know the Rice Lake truck scale was not certified. He was working at the Asgard Hazen location in July 2022 when it was installed; however, he was in a different position and had no knowledge of the legal status of the scale.

N.D.C.C. § 64-03-02 provides that it is unlawful for any person to knowingly and fraudulently use a weighing or measuring device, or keep a device for public use, which does not conform to the legal standard of weights and measures of the state.

N.D. Admin. Code § 69-10-01-01(5) defines Commerce as the distribution or consumption of quantities, things, produce, commodities, or articles which may be offered or submitted by any person for sale or hire.

N.D. Admin. Code § 69-10-01-01(6)(a) provides in part a commercial weighing and measuring device includes “a weighing or measuring device commercially used or employed in establishing. . . computing any basic charge or payment for services rendered on the basis of weight or measure. . .”

Furthermore, a device must be certified by a weights and measures inspector or a registered service person before the device can be used in commerce in accordance with N.D. Admin. Code § 69-10-01-02.

Based upon the investigation, Asgard violated N.D.C.C. § 64-03-02 and N.D. Admin. Code § 69-10-01-02 by using a non-certified weighing device, Rice Lake truck scale, for commercial use when invoicing customers for the total weight of frac sand provided. While documentation between Asgard and PSS stated the scale was not legal-for-trade, Asgard employee turnover contributed to this information not being provided to relevant parties.

Asgard 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, Asgard agrees to be assessed a civil penalty of \$500 payable to the North Dakota Public Service Commission within ten (10) business days of service of the Order accepting or approving the Consent Agreement (Order).

Having considered this matter, the Commission finds the Consent Agreement is reasonable and acceptable. Therefore, the Commission issues the following:

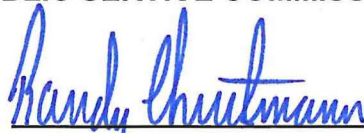
Order

The Commission Orders:

1. The Consent Agreement, filed with the Commission on November 17, 2023, between Asgard and Advocacy Staff is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement.
2. Asgard is assessed a civil penalty of \$500, payable to the North Dakota Public Service Commission within ten (10) business days of service of this Order.
3. 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. Asgard 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 (10) days of the issuance of the 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
Asgard Resources, LLC
Weights & Measures Enforcement**

Case No. WM-23-309

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	
)	
vs.)	CONSENT AGREEMENT
)	
Asgard Resources, LLC)	
)	
Respondent.)	

This Consent Agreement is entered into by and between Asgard Resources, LLC (Asgard) and the Public Service Commission (Commission) Advocacy Staff (Staff) (together, the Parties) for resolution of Case No. WM-23-309.

Preliminary Statement

On March 23, 2023, the Commission received a complaint alleging the truck scale located at Asgard, 4840 Highway 200, Hazen, North Dakota 58545 was not weighing accurately.

On April 11, 2023, Staff received a weights & measures Test Report from Prairie Scale Systems, Inc. (PSS), a North Dakota Registered Service Company, placing-in-service a legal-for-trade Avery Weigh-Tronix (Weigh-Tronix) truck scale at the Asgard Hazen location on April 10, 2023.

On September 15, 2023, Asgard admitted that prior to April 16, 2023, they were using the Rice Lake scale in commerce, but claimed that they did not know it had not been certified and placed-in-service for use in commerce.

Discussion

On March 23, 2023, the Commission received a complaint alleging the truck scale located at Asgard, 4840 Highway 200, Hazen, North Dakota 58545 was not weighing accurately. A review of the Commission's weights and measures database produced no results for an Asgard Hazen location; however, the database did have record of Asgard having two certified truck scales at 128 Highway 2 East, Towner, North Dakota 58788.

On April 17, 2023, a Commission Weights and Measures Inspector (Inspector) conducted a Quality Assurance (QA) inspection at the Asgard Hazen location. The Inspector noted there were two truck scales at this location, the Weigh-Tronix scale and a Rice Lake Surveyor Portable Truck Scale (Rice Lake). The scale indicator for the Rice Lake truck scale had a PSS sticker stating, "SERVICED & TESTED ▪ NON-JURISDICTIONAL" and identified a date of July 2022. The scale indicator for the Weigh-Tronix truck scale had a PSS sticker stating, "TESTED AND APPROVED" and identified a date of April 2023. Additionally, the Inspector spoke with Jared Moore, Asgard Mine Manager, regarding the operation. According to Mr. Moore, the mine began using the Weigh-Tronix truck scale on April 16, 2023. Up until this date, the Rice Lake truck scale was being used. Mr. Moore added the process for loading trucks is to have empty trucks pull onto the scale to establish a tare weight, and then the truck is loaded with frac sand while still on the scale. Once loading is complete, the gross weight of the truck is subtracted from the tare weight to establish the net weight. Customers place a bulk order

with Asgard, and all net weights are tallied until they reach the bulk ordered amount. Once the order is fulfilled, an invoice is sent to the customer for the total amount of frac sand provided.

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On September 15, 2023, Staff spoke with Mr. Moore who confirmed the Rice Lake truck scale had been removed from the facility and only the Weigh-Tronix scale was being used. When questioned about his knowledge of the legal status of the Rice Lake truck scale, Mr. Moore said he did not know the Rice Lake truck scale was not certified. He was working at the Asgard Hazen location in July 2022 when it was installed; however, he was in a different position and had no knowledge of the legal status of the scale.

Violation: Using a Non-Certified Weighing Device in Commerce

N.D.C.C. § 64-03-02 provides that it is unlawful for any person to knowingly and fraudulently use a weighing or measuring device, or keep a device for public use, which does not conform to the legal standard of weights and measures of the state.

N.D. Admin. Code § 69-10-01-01(5) defines Commerce as the distribution or consumption of quantities, things, produce, commodities, or articles which may be offered or submitted by any person for sale or hire.

N.D. Admin. Code § 69-10-01-01(6)(a) provides in part a commercial weighing and measuring device includes "a weighing or measuring device commercially used or employed in establishing. . . computing any basic charge or payment for services rendered on the basis of weight or measure. . ."

Furthermore, a device must be certified by a weights and measures inspector or a registered service person before the device can be used in commerce in accordance with N.D. Admin. Code § 69-10-01-02.

Based upon the investigation, Asgard violated N.D.C.C. § 64-03-02 and N.D. Admin. Code § 69-10-01-02 by using a non-certified weighing device, Rice Lake truck scale, for commercial use when invoicing customers for the total weight of frac sand provided. While documentation between Asgard and PSS stated the scale was not legal-for-trade, Asgard employee turnover contributed to this information not being provided to relevant parties.

Agreement

Staff considered the mitigating circumstances provided by Asgard. 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. Asgard violated N.D.C.C. § 64-03-02 and N.D. Admin. Code § 69-10-01-02 by knowingly using a non-certified weighing device, Rice Lake truck scale, for commercial use when invoicing customers for the total weight of frac sand provided.
2. Asgard agrees to be assessed a civil penalty of \$500.
3. Asgard agrees to remit \$500, 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. Asgard 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, Asgard 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, Asgard 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 Asgard and bind Asgard for the purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 17th day of November, 2023

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION


By: _____


John Schuh
Special Assistant Attorney General (Bar ID 08138)
Public Service Commission
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480
701-328-2421

Dated this 13 day of Nov, 2023

Asgard Resources, LLC

By: _____


John Isom, Owner