

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

CENTRAL ENVIRONMENTAL SERVICES, LLC,
 A West Virginia Limited Liability Company,
 Plaintiff,

v.

Civil Case No. 17-C-65

GULFPORT ENERGY CORPORATION,
 Defendant.

TRIAL ORDER

On the 14th day of November, 2018, a non-jury trial was held in the above-styled action. The Court having heard the testimony and reviewed the evidence presented makes the following FINDINGS OF FACT and CONCLUSIONS of LAW. All findings herein are established by a preponderance of the evidence.

The Court finds that Central Environmental Services provided transportation and disposal of flow back and production fluids, tank cleaning, and drill cuttings disposal and transportation to Gulfport Energy pursuant to the terms of a Master Service Agreement dated May 21, 2012.

Paragraph 8 of the Master Services Agreement provided the Terms of Payment and Billing instructions.

"a) All Contractor invoices shall identify (i) the items related to the charges (including, but not limited to, receipts, time sheets, dates, hours, rate, labor classifications, and material charges, all with appropriate approvals of Company personnel), (ii) whether prices are the published, negotiated, or bid prices, (iii) charges by, as applicable, block name and number, lease number and name, or platform name and number, and well number. If Company separately agrees to pay for travel time, Contractor shall identify such time on its invoices separately from other time billed.

b) All invoices shall be directed to the following address unless otherwise specified by Company:

Gulfport Energy Corporation
 14313 N. May Ave., Suite 100
 Oklahoma City, Oklahoma 73134
 Attention: Hien Nguyen

5/2/19

cc:3 M. Norris, J. West, R. Bays

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c) Contractor shall submit invoices as Work is completed unless Company approves other invoicing arrangements at the time it requests the Work. Separate invoices should be submitted for each project whether drilling, production, or otherwise. Single Invoices for multi-wells or multi-projects are not acceptable. Company normally will not make partial payments on invoices. Therefore, if part of an invoice is in error, including any omission of, or error in information required to be in the invoice (as described above), or is disputed by Company, said invoice will be returned for correction.

d) Unless Company disputes an item in an invoice or requires any information provided for herein, or the invoice is submitted in improper form, Company shall pay Contractor the full amount of an invoice within thirty (30) days after its receipt, less any cash discount. Any payment shall be made by Company's check or draft payable to the order of Contractor, and shall be delivered or mailed to Contractor at Contractor's address for the delivery of notices as provided herein. Payment by Company of Contractor's invoices shall be without prejudice to Company's rights to subsequently challenge the correctness thereof.

e) Notwithstanding the approval for payment of any invoices submitted, Company shall have the right to withhold any payments thereon until Contractor shall have furnished (i) if Company disputes the invoice, verification satisfactory to Company of Work performed, (ii) if Company disputes the invoice, verification of satisfactory performance of all goods, equipment, and facilities to which such payment relates, (iii) proof that all claims against Contractor by its suppliers and subcontractors for labor, goods, equipment, and facilities of any kind furnished in connection with Contractor's obligations under this Agreement have been fully paid and satisfied, and (iv) proof that all liens, claims and privileges of Contractor's suppliers and subcontractors, and claims for injuries to persons or property not covered by insurance, arising out of Work performed or goods, equipment, or facilities furnished in connection with Contractor's obligations under this Agreement have been fully released or satisfied."

The invoices set forth in Plaintiff's Exhibit 5 contained no back up documentation to support Central Environmental Services' invoices. The total of these invoices amounts to \$39,042.90. As it relates to said invoices the Court finds that Plaintiff has failed to meet its burden.

The invoices set forth in Plaintiff's Exhibit 4 are for box rentals for which documentation exists. Plaintiff in its closing argument, however, conceded that Invoice 49031, dated November 30, 2014 in the amount of \$5,692.00 was incorrect and therefore no longer seeks damages for that invoice. The Court notes a July 6, 2016 email in which Jean Hale, the manager of Joint Operations for Defendant Gulfport Energy communicated to other Gulfport Staff regarding the invoices, and box rentals in particular wherein she stated "I think we can agree that it is likely we owe the vendor for these services." Defendant's Exhibit #2.

The total of the invoices for box rentals contained in Plaintiff's Exhibit 4 excluding Invoice 49031 is \$66,993.00. The Court finds based upon the testimony presented and the Court's review of the

supporting documentation that the work reflected in said invoices was completed by Central Environmental Services for the benefit of Gulfport.

The Court next reviewed those invoices admitted as Exhibit 3 generally described as transportation invoices. These invoices contained some additional charges that required review of the MSA to determine billable services. The Court finds that the MSA provided in section 5a, in part, that "Contractor, at its own cost and expense, shall provide ... 2) the equipment, consumable materials, supplies, tools, and appliances necessary and appropriate to the performance of the Work free from defect. . ." Invoices 48691, 48723, 48694, 42860, 48701, 48710, 48716, 48731, 49750, 49760, 49884, and 50092 included charges for equipment, consumable materials, supplies, tools, and appliances in violation of the MSA. The total amount of these non-billable charges was \$2,514.50. The Court finds in reviewing the invoices that Environmental Services did, however, complete the work described therein for the benefit of Gulfport. The total amount of appropriate charges reflected in Exhibit 3 is \$77,044.75.


The Court further finds that the evidence showed that the employees at Gulfport Energy were somewhat transitory in nature and could not always be found for the approvals required by the Master Services Agreement.

Taking all of the testimony and exhibits into consideration, the Court FINDS that Central Environmental Services has established by a preponderance of the evidence that the work set forth in the invoices as described above was provided for the benefit of Gulfport Energy. "Under the law of unjust enrichment, if benefits have been received and retained under such circumstances that it would be inequitable and unconscionable to permit the party receiving them to avoid payment therefore, the law requires the party receiving the benefits to pay their reasonable value." *Realmark Developments, Inc. v. Ranson*, 208 W.Va. 717, 542 S.E.2d. 880 (2000). The Court having removed the inappropriate charges as set forth herein, finds the reasonable value of the services was \$144,037.75.

Judgment is granted in favor of Central Environmental Services and against Gulfport Energy in the amount of \$144,037.75 plus interest at the statutory rate until paid.

It is further ORDERED that the Clerk of this Court send a copy of this order to all counsel of record.

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Jason A. Wharton, Judge