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January 9, 2013

Clerk of District Court  
Burleigh County Courthouse  
P. O. Box 1055  
Bismarck, ND 58502-1055

Re: Smith Contracting, Inc. v. North Dakota Public Service Commission Abandoned  
Mine Lands Division.

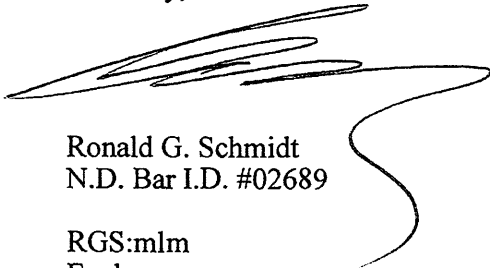
Dear Clerk of Courts:

Enclosed for filing please find the following:

1. **Plaintiff's Motion To Vacate Scheduling Order and Trial Date;**
2. **Notice of Hearing and Request to Appear Telephonically at Hearing on Motion To Vacate Scheduling Order and Trial Date;**
3. **Affidavit of Service**

Copies of the same has been served on counsel for Defendant deemed service by mail.  
Courtesy copies have also been e-mailed to Judge Jorgensen for his convenience.

Sincerely,



Ronald G. Schmidt  
N.D. Bar I.D. #02689

RGS:mlm

Enclosures

cc: Mitchell D. Armstrong  
Honorable Donald Jorgensen  
Smith Contracting, Inc.

STATE OF NORTH DAKOTA	)	IN DISTRICT COURT
	: ss	
COUNTY OF BURLEIGH	)	SOUTH CENTRAL JUDICIAL DISTRICT
SMITH CONTRACTING, INC.	)	File No. 08-2011-CV01887
	)	
Plaintiff,	)	
v.	)	
	)	<b>PLAINTIFF'S MOTION TO VACATE</b>
NORTH DAKOTA PUBLIC SERVICE	)	<b>SCHEDULING ORDER AND TRIAL</b>
COMMISSION ABANDONED MINE	)	<b>DATE</b>
LANDS DIVISION	)	
	)	
Defendant.	)	
	)	

COMES NOW the above-named Plaintiff Smith Contracting, Inc. and respectfully moves the Court for its Order vacating the current Scheduling Order, including the February 4, 2013 trial date for the following reasons and grounds.

Plaintiff is filing a Motion to reconsider this Court's January 4,, 2013 Order Upon Pending Motions for Summary Judgment and it is unlikely that this Motion could be briefed, heard and decided on or before the February 4, 2013 trial date, and Plaintiff's appeal to the North Dakota Supreme Court if the Motion for Reconsideration is denied.

WHEREFORE, Plaintiff respectfully requests the Order of the Court vacating the current Scheduling Order and February 4, 2013 trial date for all of the above and foregoing reasons.

Dated this 7 day of January, 2013.

SCHMIDT, SCHROYER, MORENO, LEE & BACHUND, P.C.

By: \_\_\_\_\_

Ronald G. Schmidt - N.D. Bar I.D. #02689  
832 St. Joseph Street - P. O. Box 860  
Rapid City, SD 57709-0860  
Telephone: (605) 341-0112  
(Attorneys for Plaintiff Smith Contracting, Inc.)

STATE OF NORTH DAKOTA )  
 : ss  
COUNTY OF BURLEIGH )

IN DISTRICT COURT  
SOUTH CENTRAL JUDICIAL DISTRICT

SMITH CONTRACTING, INC. )  
 )  
Plaintiff, )  
v. )  
NORTH DAKOTA PUBLIC SERVICE )  
COMMISSION ABANDONED MINE )  
LANDS DIVISION )  
Defendant. )

File No. 08-2011-CV01887  
**NOTICE OF HEARING  
AND  
REQUEST TO APPEAR  
TELEPHONICALLY  
AT HEARING ON MOTION TO  
VACATE SCHEDULING ORDER  
AND TRIAL DATE**

**TO: PLAINTIFF ABOVE NAMED AND ITS ATTORNEYS OF RECORD:**

Please take notice and be advised that Plaintiff's **Motion to Vacate Scheduling Order and Trial Date** shall be brought on before the Honorable Donald Jorgensen, District Court Judge, on Tuesday, January 15, 2013 at 11:30 a.m. (cst) (10:30 a.m. mst) at the Burleigh County Courthouse in Bismarck, North Dakota or as soon thereafter as counsel can be heard.

**Counsel for Plaintiff respectfully requests to appear at the hearing telephonically.**

Dated this 9 day of January, 2013.

SCHMIDT, SCHROYER, MORENO, LEE & BACHAND, P.C.

By: \_\_\_\_\_

Ronald G. Schmidt  
832 St. Joseph Street  
P. O. Box 860  
Rapid City, SD 57709-0860  
Telephone: (605) 341-0112  
N.D. Bar I.D. #02689  
(Attorney for Plaintiff Smith Contracting, Inc.)

STATE OF SOUTH DAKOTA )  
 : SS  
COUNTY OF BURLEIGH )

IN CIRCUIT COURT  
SOUTH CENTRAL JUDICIAL DISTRICT

SMITH CONTRACTING, INC. )

File No. 08-2011-CV01887

Plaintiff, )

v. )

AFFIDAVIT OF SERVICE

NORTH DAKOTA PUBLIC SERVICE )  
COMMISSION ABANDONED MINE )  
LANDS DIVISION )

Defendant. )

State of South Dakota )  
 : SS  
County of Pennington )

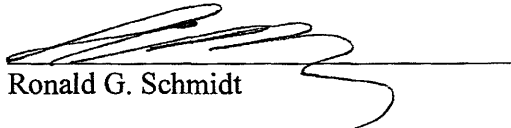
Ronald G. Schmidt, being first duly sworn, deposes and states the he is over the age of eighteen years of age and not a party to the above-entitled matter. That on 9 day of January, 2013, he filed by U.S. mail, first class, postage prepaid, copies of the following:

Plaintiff's Motion to Vacate Scheduling Order and Trial Date;  
Notice of Hearing and Request to Appear Telephonically on Motion to Vacate Scheduling Order and Trial Date; and  
Affidavit of Mailing.

upon the following:

Mitchell D. Armstrong  
Smith, Bakke, Porsborg, Schweiger & Armstrong  
Attorneys at Law  
P. O. Box 460  
Bismarck, ND 58502-0460

and filed the originals with the Clerk of Courts of Burleigh by first class U.S. mail.

  
Ronald G. Schmidt

Subscribed and sworn to before me this 9 day of January, 2013.

*Brenda L. Meyers*  
\_\_\_\_\_  
Notary Public

My commission expires:  
(Seal)

**My Commission Expires  
February 14, 2016**