

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Lakeside Construction- Richard Strand Owner
Damage Prevention Enforcement**

Case No. PU-10-633

AFFIDAVIT OF SERVICE BY CERTIFIED & REGULAR MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Cara DeSaye deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **14th** day of **July, 2011**, she deposited in the United States Mail, at Bismarck, North Dakota, **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed, containing a photocopy of:

Consent Order

The envelope was addressed as follows:

Lakeside Construction
Richard Strand
1131 136th Ave NE
Finley ND 58230

Certified No. 7010 1060 0001 0644 3768

Cara DeSaye further deposes and says that on the **14th** day of **July, 2011**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same:

Scott Fritz
Otter Tail Power Company
215 South Cascade Street
Fergus Falls MN 56537

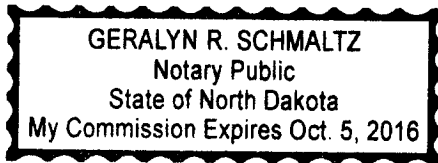
Each address shown is the respective addressee's last reasonably ascertainable post office address.

Carla DeSoye

Subscribed and sworn to before me
this 14th day of July, 2011

Geraldine R. Schmaltz
Notary Public

SEAL



STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Lakeside Construction – Richard Strand Owner
Damage Prevention Enforcement**

Case No. PU-10-633

RECEIVED

JUL 11 2011

CONSENT ORDER

July 13, 2011

PUBLIC SERVICE COMMISSION

The North Dakota Public Service Commission (Commission) has determined as follows:

1. Lakeside Construction (Lakeside) is a North Dakota corporation with principal offices at 1131 136th Avenue N.E., Finley, North Dakota, 58230.

2. Otter Tail Power Company (Otter Tail) is a Minnesota corporation with principle offices at 215 South Cascade Street, Fergus Falls, Minnesota 56537.

3. On November 29, 2010, the Commission received a Third Party Damage Complaint form from Scott Fritz, One Call Administrator for Otter Tail. The complaint alleged a violation by Lakeside of North Dakota Century Code Chapter 49-23, and a copy is attached as Exhibit 1.

4. North Dakota Century Code Chapter 49-23 codifies the state's One-Call Excavation Notice System law, requiring an excavator to contact the One Call Hotline notification center and provide an excavation or location notice at least forty-eight hours before beginning excavation.

5. North Dakota Century Code section 28-32-22 provides:

28-32-22. Informal disposition.

Unless otherwise prohibited by specific statute or rule, informal disposition may be made of any adjudicative proceeding, or any

part or issue thereof, by stipulation, settlement, waiver of hearing, consent order, default, alternative dispute resolution, or other informal disposition, subject to agency approval. Any administrative agency may adopt rules of practice or procedure for informal disposition if such rules do not substantially prejudice the rights of any party. Such rules may establish procedures for converting an administrative matter from one type of proceeding to another type of proceeding.

6. North Dakota Administrative Code section 69--02-04-05 provides:

69-02-04-05. Waiver of hearing - Shortened procedure.

In any proceeding in which the commission is authorized to act after opportunity for hearing, opportunity is afforded by service of notice fixing a reasonable period of time within which any person desiring to be heard may file a protest or request for a hearing. If a protest or request for hearing is not filed within the time provided, the commission may dispose of the matter on the basis of the pleadings, other submittals, and the studies and recommendations of the staff. A party not requesting oral hearing in the party's pleading is deemed to have waived a hearing for the purpose of the decision, but not for the purpose of applying for rehearing with respect to the decision. If a person requests a hearing but does not show good cause, the commission may determine the matter without a hearing.

7. On October 23, 2010 Lakeside was preparing a site to erect two grain bins near Finley, North Dakota.

8. Lakeside failed to call North Dakota One Call to obtain a One Call ticket before beginning the site preparation work.

9. In the process of preparing the site, Lakeside dug into a three-phase primary circuit electric distribution line causing all three fuses to blow. This resulted in disruption of electric service to customers in Finley, North Dakota.

10. On December 13, 2010 North Dakota Public Service Commission Staff forwarded the Third Party Damage Complaint form to Lakeside.

11. On April 1, 2011, Lakeside filed its response to the complaint, and a copy is attached as Exhibit 2.

12. The Commission is authorized by North Dakota Century Code section 49-07-01.1 to impose a fine of up to \$5,000 for violations of the North Dakota One Call law.

13. Respondent Lakeside agrees to informal disposition of this matter, without a hearing, as provided under North Dakota Century Code section 28-32-22 and North Dakota Administrative Code section 69-02-04-05.

14. Respondent Lakeside acknowledges that at the time of signing the Consent to Entry of Order, it was aware of or had been advised of its rights to a hearing in this matter, to consult an attorney, to present argument to the Commission, and to appeal from any adverse determination after a hearing, and Respondent Lakeside expressly waives those rights.

15. There are no covenants, promises, undertakings, or understanding other than as specifically set forth in this Order.

16. For purposes of resolving this matter, without further administrative proceedings, Lakeside and the Commission have agreed to enter into the following order.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Respondent pay a fine of \$1000 payable to the North Dakota Public Service Commission within ten business days of the date of this Order.

PUBLIC SERVICE COMMISSION

Handwritten signatures of Kevin Cramer, Tony Clark, and Brian Kalk, each written over a horizontal line.

Kevin Cramer
Commissioner

Tony Clark
Chairman

Brian Kalk
Commissioner

CONSENT TO ENTRY OF ORDER

The undersigned, on behalf of Lakeside Construction, states that he has authority to sign on behalf of and bind Lakeside Construction, and that he has read the foregoing Consent Order, that he knows and fully understands its content and effect, that he has been advised of the right to a hearing in this matter, the right to be represented by legal counsel, the right to present evidence and arguments to the Commission, and the right to appeal from an adverse determination after hearing; and that by signing this Consent to Entry of Order he waives those rights in their entirety on behalf of Lakeside Construction and consents to entry of this Order by the North Dakota Public Service Commission. It is further expressly understood that this Order constitutes

the entire settlement agreement between the parties, there being no other promises or agreements, either express or implied.

DATED this 8 day of July, 2011.

Lakeside Construction

By Richard C. Hansen

Its President
{TITLE}

PART F – MARKING

Were facilities marked?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input checked="" type="checkbox"/> N/A
Were utility/facility marks visible in the area of excavation?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input checked="" type="checkbox"/> N/A
Were the utility/facilities marked correctly?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input checked="" type="checkbox"/> N/A
Was the marking complete prior to the start time on the ticket?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input checked="" type="checkbox"/> N/A
Did the excavator pre-mark with white paint?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input checked="" type="checkbox"/> N/A
Was the facility marked accurately (within 18 inches)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input checked="" type="checkbox"/> N/A
Did the excavator use reasonable care to maintain locate marks for the life of project?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input checked="" type="checkbox"/> N/A

PART G – DAMAGE (if applicable)

Fatalities 3 phase primary	Injuries None	Length of Hospitalization, If Applicable
Estimated Value of Property Damage: \$		Number of Customers Affected 0
Damaged In <input type="checkbox"/> Public <input checked="" type="checkbox"/> Private		Photos of Damaged Facility <input type="checkbox"/> Yes <input type="checkbox"/> No (If yes, please include copies)
Additional Information		

PART H – SIGNATURE

Signature of Person Filing Complaint Scott Fritz	Date 11/8/10
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Please include additional documents and photos, if applicable.

*If you are filing on behalf of a company, please provide information supporting your authority to file this complaint.

Send Completed, Original Complaint To:
Public Service Commission
Testing and Safety Division
600 E Boulevard Ave Dept 408
Bismarck ND 58505-0480
Telephone: (701) 328-2400



215 S. Cascade Street
PO Box 496
Fergus Falls, MN 56538-0496

Direct: 218-739-8521
Fax: 218-739-8973

Scott Fritz
Civil Design/One Call Administrator
Asset Management and Support

sfritz@otpc.com
www.otpc.com

1848

PROPERTY DAMAGE REPORT



GENERAL INFORMATION		Claim No.
DATE OF INCIDENT	10-23-10	TIME <input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m. 14:30
LOCATION: Street Address	Industrial Drive	City and State Finley ND
Witness: Name/Address	Richard Strand - Owner	701-361-8097

DAMAGE TO PROPERTY OF OTHERS		
Owner's Name	Address	
Property Damage	Has owner filed claim? <input type="checkbox"/> yes <input type="checkbox"/> no	Amount \$

DAMAGE TO COMPANY PROPERTY	
Property Damage	Dug up 3-phase primary. Damaged all 3 cables

PARTY RESPONSIBLE FOR INCIDENT	
Name of Driver	Lakeside Construction
Address	1131 136 th Ave NE Finley ND 58230
Insurance Company	Citizen's Insurance
Address	300 Central Ave Finley ND 58730
Vehicle License Number	Driver's License Number
Owner of Vehicle	Insurance Co.

Describe fully how incident happened.

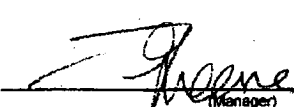
Lakeside was blading area to get ready for 2 new grain bins. Were digging down to replace with fill and dug into our 3-phase line. Contractor took word from landowner there was nothing there. Had to install 6 splice & wire to repair.

Preventable Non-Preventable

Accountable Parties: _____

Signatures: _____

J. Foss
Signature of person completing form

MANAGER'S RECOMMENDATION	REPAIR CHARGES (time or other)
<input type="checkbox"/> Deny claim <input type="checkbox"/> Pay claim due to our negligence or liability <input type="checkbox"/> Pay claim due to public relations <input type="checkbox"/> Make partial payment due to public relations involved <input checked="" type="checkbox"/> Area to bill	WO # 120964 4-12-10
Inv 187172 10-12-10  (Manager)	

COMPLETION DIRECTIONS: Upon completion of this form, forward to Manager for recommendation completion (at left). Manager forward white copy to Safety Services. Retain pink copy for division file.



**YOUR COMPLETE
AGGREGATE SOURCE!**

RICHARD STRAND, OWNER
1131 136TH AVE NE
FINLEY, ND 58230
PHONE: 701-543-3418
FAX: 701-543-4225
CELL: 701-361-8097
LAKESIDECONST@INVISIMAX.COM

RECEIVED

APR 01 2011

PUBLIC SERVICE COMMISSION

Public Service Commission
Attn: Patrick Fahn, Director
Compliance and Competitive Markets
600 E Boulevard Ave, Dept 408
Bismarck, ND 58505-0480

Re: Third Party Damage Complaint
Case No. PU-10-633

Dear Mr. Fahn:

In response to the damage complaint filed against us by Ottertail Power Company, I would like to begin by expressing my sincere apologies for the damages incurred by my company. I admit fault for the damages incurred to the 3-phase primary cable that my company hit on October 23, 2010. I would like to have the opportunity to better explain the circumstances of this instance.

I own a small construction company in rural Finley, ND. We offer a variety of services to our local surrounding communities, including, but not limited to, hauling of aggregates, gravel road construction, carpentry, and excavation. As such, I am aware of the ND One Call locator service. We routinely use the services provided by One Call before each job that we take on that would entail excavation. We typically put in a request for this service a few days prior to the date in which we plan to do the job. We are committed to the safety of our employees and customers and are grateful that this service exists.

In this particular case, I had scheduled this job to take place the first week in November 2010. However, I received a call from my customer, Mike Peterson, on Friday, October 22, 2010 requesting that we do this job for him as soon as possible. I explained to him that we had not called in a locate yet and would not be able to get to the job until after the locate was completed. Mr. Peterson explained to me that they were going to pour concrete for the bin on Monday, October 25, 2010 and that he needed the site prepped, stripped and filled prior to their arrival. Mr. Peterson assured me that there were no wires in the excavation area and that it was located on his private property. He told me he was sure that it would not be an issue and that if, for some reason, we would hit any wires that he would pay the damages. As I had done the ground work for the original bin site, I reluctantly agreed to do the work the following day, Saturday, October 23, 2010. We were trying to please a recurring customer and regretfully it ended in an unfortunate damage to wires.

I had sent an employee of mine, Jon Cooper, out to the job site with a bulldozer to strip the black dirt off of the bin site. The operator was stripping the dirt from the South side to the North. The operator had completed to strip the site and was using the bulldozer to clean up the excess dirt. As he was finishing this clean up, he went outside of the excavation area that we had planned on utilizing and caught a wire with the dozer blade. I was on the job site myself as this occurred. I ensured the safety of all those on the job site and called the local Ottertail Crew supervisor, Jerry Foss, immediately upon the wire being damaged. We stopped all work and secured the site until Mr. Foss arrived on site. Upon his arrival, we explained the incident and offered to help Ottertail Power in any way that we could. Mr. Foss evaluated the situation and went back to his shop to get parts. In the meantime, we further exposed the wires, at my expense, so that it could be more easily repaired. After Mr. Foss completed the repairs to the wires, we covered the wires with sand, also at my expense, as Mr. Foss requested. After all damages were repaired, I gave Mr. Foss my billing address and insurance information.

We have since paid the fees for the damages of the wires to Ottertail Power in the amount of \$1,559.98. Mr. Peterson has paid for half of the cost of this repair to my company. Since the incident, I have reviewed the job and have subsequently explained to my employees during our next safety training session the importance of staying within the charted excavation area. Had my employee stayed within the excavation area that we had sited, this damage would not have occurred. I have included a copy of my map of the excavation area. I have marked on the map approximately where the damages occurred as well.

Please take into consideration that this is the first time that we have had such an incident. We have learned a valuable lesson. My company routinely does, and will continue to, use the locator services of ND One Call. I am committed to the safety of my employees and the safety of all others involved. I am grateful that there were no injuries on the job site. We offer our sincere apologies for the damages incurred.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard C. Strand". The signature is fluid and cursive, with a large, prominent loop at the end of the last name.

Richard C. Strand
President

Trees

N

Ottertail Power Wires

Only 18" covered usually 3' or more covered

New Bin Area
Stripped off

Existing East
Bins