

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
Kindred Plumbing and Heating  
Damage Prevention Enforcement

Case No. PU-12-303

AFFIDAVIT OF SERVICE CERTIFIED 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 28<sup>th</sup> day of **March, 2013**, she deposited in the United States Mail, at Bismarck, North Dakota, **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and containing photocopy of:

**Formal Complaint of North Dakota Public Service Commission  
Motion**

The envelope was addressed as follows:

Kindred Plumbing and Heating, Inc.  
302 Woodlawn Drive  
Kindred ND 58051-0025

Cert. No. 7012 1640 0002 4650 0619

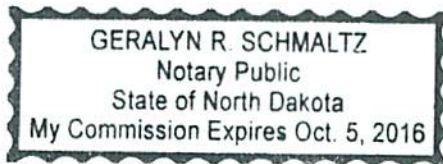
The address shown is the respective addressee's last reasonably ascertainable mailing address.

  
\_\_\_\_\_

Subscribed and sworn to before me  
this 28<sup>th</sup> day of **March, 2013**.

  
\_\_\_\_\_  
Notary Public

SEAL



**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Public Service Commission,**

**Case No. PU-12-303**

**Complainant,**

**vs.**

**Kindred Plumbing and Heating, Inc.**

**Respondent.**

**COMPLAINT**

The North Dakota Public Service Commission Staff (Staff), for its complaint against Kindred Plumbing and Heating, Inc., alleges and shows the following:

I

Kindred Plumbing and Heating, Inc. (Kindred Plumbing) is a North Dakota corporation with principle offices at 302 Woodlawn Drive, Kindred, ND 58051-0025.

II

Otter Tail Power Company (Otter Tail) is wholly owned subsidiary of Otter Tail Corporation, a Minnesota corporation with principle offices at 215 South Cascade Street, Fergus Falls, MN 56538-0496.

III

On June 15, 2012, Otter Tail filed a Third Party Damage Complaint form with the Public Service Commission (Commission). The Complaint form filed by Otter Tail and an affidavit of Patrick Fahn, Director of Compliance and Competitive Markets, North

Dakota Public Service Commission, are attached as Exhibit 1. Otter Tail alleged a violation by Kindred Plumbing of North Dakota Century Code Chapter 49-23.

#### IV

As part of the Third Party Damage Complaint, Otter Tail included documentation proving that Kindred Plumbing obtained North Dakota One Call (One Call) ticket number 12076901 on Friday, June 8, 2012 at 2:42 PM for work to begin on June 12, 2012 at 2:45 PM.

#### V

As alleged by Otter Tail, an Otter Tail employee went to locate the path of Otter Tail's facilities with pin flags and paint between 8:30 and 9:00 AM on Monday, June 11, 2012. When the employee arrived, the trench was already dug in violation of the North Dakota Century Code.

#### VI

North Dakota Century Code § 49-23-04(1) states:

Except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice at least forty-eight hours before beginning any excavation, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to

#### VII

Kindred Plumbing violated North Dakota Century Code Chapter 49-23 by failing to wait forty-eight hours before beginning its excavation. Note that because Kindred Plumbing called on a Friday afternoon and weekends are excluded from the 48 hour waiting period, Kindred Plumbing was not authorized to begin work until Tuesday afternoon. Kindred Plumbing began the excavation prior to Monday, June 11, 2012.

## VIII

The North Dakota Public Service Commission Damage Prevention Plan states:

### D PROPOSED CIVIL PENALTIES:

1. The following criteria must be used by Commission staff to determine if a civil penalty should be proposed when filing a formal complaint:
  - a. The nature, circumstances and severity of the complaint;
  - b. The degree of suspected fault on the part of the respondent;
  - c. The respondent's history of prior violations or complaints;
  - d. The respondent's ability to pay;
  - e. Any good faith effort by the respondent in attempting to achieve compliance; and
  - f. The effect the penalty may have on the respondent's ability to continue in business.

## IX

North Dakota Century Code § 49-07-01.1 states:

Any person who violates any statute, commission order, or commission rule which applies to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, 24-09, 32-25, and 51-05.1, titles 60 and 64, and title 49 except for chapter 49-22, shall, in addition to any other penalty provided, be subject to a civil penalty of not to exceed five thousand dollars. The civil penalty may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.

X

By its June 19, 2012 letter, Staff informed Kindred Plumbing of Otter Tail's third party damage complaint filing, and asked for a response to the complaint of Otter Tail by July 6, 2012. As of this date, Kindred Plumbing has not responded to the Staff with Kindred Plumbing's version of events.

XI

Commission records indicated that two previous complaints have been filed regarding this excavator, both originated by Otter Tail. In Case No. PU-10-649, Kindred Plumbing failed to obtain a locate ticket and damaged electrical lines. Kindred Plumbing signed a consent order and paid a \$1,000 fine. In Case No. PU-11-298, due to a dispute concerning the need for a locate ticket, Otter Tail withdrew the complaint.

XII

In this case, Kindred Plumbing has not made a good faith effort to comply with North Dakota Century Code Chapter 49-23. In addition, Kindred Plumbing has refused to offer an explanation of events or contact the Staff to work through a consent order.

XIII

North Dakota Century Code section 28-32-21(e) requires that an answer to this complaint must be served upon the Commission within twenty days after service of the complaint, or the Commission may deem the complaint to be admitted. If Kindred Plumbing fails to answer within twenty days after service of the complaint, the

Commission may deem the Complaint admitted. Answers must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure.

**Prayer for Relief**

Wherefore, Public Service Commission Staff seeks the following relief:

1. That the Commission find Kindred Plumbing in violation of North Dakota Century Code Chapter 49-23 for failing to comply with the One Call procedures outlined in North Dakota Century Code § 49-23-04.
2. That the Commission impose a civil penalty in the amount of \$1,500.00.
3. Such other relief that the Commission finds just and proper.

Dated this 22nd day of March 2013.



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Patrick Fahn  
Director, Compliance & Competitive Markets  
Public Service Commission  
State Capitol – 12<sup>th</sup> Floor  
600 E Boulevard Ave – Dept 408  
Bismarck, North Dakota 58505-0480  
701-328-4077

Public Service Commission Advocacy Staff

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
Kindred Plumbing and Heating  
Damage Prevention Enforcement

Case No. PU-12-303

AFFIDAVIT OF PATRICK FAHN

Patrick Fahn, being duly sworn, states as follows:

1. That he is a citizen on the United States of America, of legal age, residing at Bismarck, North Dakota.
2. That he is employed with the North Dakota Public Service Commission (Commission) as Director of Compliance and Competitive Markets, and as such is charged with the duty of enforcing the relevant provisions of the North Dakota Century Code.
3. That on June 15, 2012, Otter Tail Power Company filed a Third Party Damage Complaint form with the Public Service Commission (Commission) alleging a violation by Kindred Plumbing of North Dakota Century Code Chapter 49-23.
4. That a true and correct copy of the Third Party Damage Complaint form filed by Otter Tail Power Company on June 15, 2012 and docketed in the captioned case, is attached.

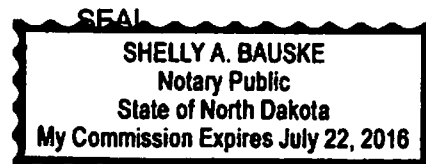
Dated this 22nd day of March, 2013.

By: Patrick Fahn  
Patrick Fahn

Subscribed and sworn to before me  
this 22nd day of March, 2013.

County of Burleigh

Shelly A Bauske  
Notary Public





**THIRD PARTY DAMAGE COMPLAINT**  
Public Service Commission  
SFN 58067 (12-11)

**RECEIVED**

JUN 15 2012

**PUBLIC SERVICE COMMISSION**

**PART A - WHO IS SUBMITTING THIS COMPLAINT**

Information Being Submitted By <input type="checkbox"/> Individual <input checked="" type="checkbox"/> Company	Company/Organization Otter Tail Power	Person Filing Information Scott Fritz	Position One Call Administrator	
Address of Person Filing Information 215 S Cascade St	City Fergus Falls		State Mn	Zip Code 56537
Telephone Number 218-739-8521	Email Address sfritz@otpc.com		Date 6/13/12	

**PART B - WHO ALLEGEDLY VIOLATED THE ONE-CALL REGULATIONS**

Name of Excavator Kindred Plumbing and Heating		Telephone Number 701-381-3191	
Address 302 Woodlawn Dr.	City Kindred	State ND	Zip Code 58051
Name of Entity for Which Excavation Was Performed Wahpeton Airport		Telephone Number 701-642-5567	
Address 733 11th Ave. So.	City Wahpeton	State ND	Zip Code 58075

**PART C - DATE AND LOCATION OF THE EVENT**

Date of Event 6/11/12	Address of the Excavation and/or Damage Wahpeton Airport		
County Richland	City Wahpeton	State ND	Zip Code 58075

**PART D - FACILITY INVOLVED**

Type of Facility Involved Underground Electric	Operator of Facility and Contact Person (if known) Otter Tail Power/Geri Coyne		
Address P.O. Box 70	City Wahpeton	State ND	Zip Code 58074
Telephone Number 701-671-8001	Email Address (if known)		
Brief Description of Facility Involved As noted on the locate. A sewer and water extension was being installed.			

**PART E - DAMAGE (if applicable)**

Injuries NA	Estimated Value of Property Damage: \$ NA	Number of Customers Affected NA	Length of Hospitalization, if Applicable NA
Damaged Within NA	Photos of Damaged Facility NA	Public Property <input type="checkbox"/> Private Property <input type="checkbox"/>	(If yes, please include copies) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**PART F - EXCAVATION**

Was a locate requested from North Dakota One-Call?  Yes  No  Unknown

Locate Ticket Number  Yes  No  Unknown

Start Date on Ticket:

Did excavator wait until the start date/time on the ticket before commencing excavation?  Yes  No  Unknown  N/A

Were buried facilities exposed by hand or non-invasive equipment prior to excavation?  Yes  No  Unknown  N/A

**PART G - MARKING**

Were facilities marked?	<input checked="" 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 checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input checked="" type="checkbox"/> N/A
Were the utility/facilities marked correctly?	<input checked="" 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 checked="" 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 checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input checked="" type="checkbox"/> N/A
Was the facility marked accurately within 24 inches horizontally?	<input checked="" 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 H - DESCRIPTION OF EVENT**

**Description of Event**

Other Tall Power Company Employee Pat Paulson was headed to the job-site to perform a locate. He arrived on site on June 11th between 8:30 and 9:00 AM. When he arrived, the trench was already dug by Kindred Plumbing and Heating. The Work to begin Date on the ticket was 6/12/12, at 2:45 PM. A copy of the routine locate is enclosed as well as pictures taken on 6/11/12 at approximately 1:30 PM. (Still a full 24 hours before the work to begin date).

We have had several other issues with this contractor in the past. Please note the KPH on the backhoe picture.

The pictures were sent by Gail Coyne Other Tall Power Operations Manager.

**Description of Event Continued**

Please see attachment totaling 5 sheets. (Plus the 3rd Party Damage Complaint form)

I am sending full documents via standard mail.

**PART I - SIGNATURE**

Signature of Person Filing Complaint *Scott Fitz*

Date 6/14/12

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  
 600 E Boulevard Ave Dept 408  
 Bismarck ND 58505-0460  
 Telephone: (701) 328-2400

Email to the Commission

