

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 **20th** day of **May, 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:

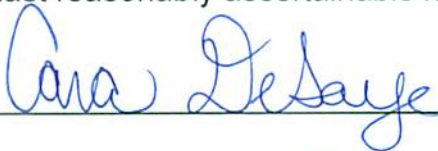
Notice of Motion
Motion for Default
Order Finding Respondent in Default

The envelope was addressed as follows:

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

Cert. No. 7012 1640 0002 4650 0404

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

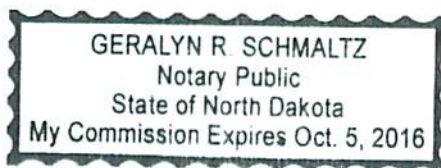


Subscribed and sworn to before me
this **20th** day of **May, 2013**.



Notary Public

SEAL



North Dakota[®]
Public Service Commission

COMMISSIONERS

Brian P. Kalk
Randy Christmann
Julie Fedorchak

Executive Secretary
Darrell Nitschke

600 E. Boulevard Ave. Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
Email: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
FAX: 701-328-2410
TDD: 800-366-6888 or 711

May 20, 2013

Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
600 E. Blvd. Ave. Dept. 408
Bismarck, ND 58505-0480

Re: Public Service Commission v. Kindred Plumbing and Heating, Inc.
Damage Prevention Enforcement
PSC Case No. PU-12-303

Dear Mr. Nitschke:

Enclosed is a Notice of Motion and Motion for Default and a proposed Order Finding Respondent in Default in the captioned case.

Best regards,


Ryan Norrell
PSC Legal Counsel

c/w enclosures: Eric Merhiy

PUBLIC SERVICE COMMISSION

Public Service Commission)	
)	Case No.PU-12-303
Complainant,)	
)	NOTICE OF MOTION AND
v.)	MOTION FOR DEFAULT
)	
Kindred Plumbing and Heating, Inc.)	
)	
Respondent.)	
)	
)	

TO: Respondent Kindred Plumbing and Heating, Inc. 302 Woodlawn Dr, Kindred, ND 58051

PLEASE TAKE NOTICE that the Public Service Commission, Advocacy Staff, Movant in the above proceeding, respectfully moves for an order declaring Kindred Plumbing and Heating, Inc. in default. The Motion is attached to this notice and by reference made a part hereof.

YOU ARE HEREWITH NOTIFIED that the Notice of Motion and Motion for Default Judgment have been submitted pursuant to N.D.C.C. § 28-32-30, N.D. Admin. Rule 69-02 and Rule 55 of the North Dakota Rules of Civil Procedure. The motion will be decided on the merits. If the public Service Commission rules in favor of Advocacy Staff's motion, you have seven (7) days after service of the default notice, order and grounds to file a written motion with the Public Service Commission requesting that the

default order be vacated and stating the grounds relied upon.

Bismarck, North Dakota, this 20th day of May, 2013

By: _____


Ryan Norrell, #06582

Legal Counsel

Advocacy Staff

North Dakota Public Service Commission

600 East Blvd. Ave Dept. 408

Bismarck, ND 58501

(701) 328-2421

rmnorrell@nd.gov

PUBLIC SERVICE COMMISSION

Public Service Commission)	
)	Case No.PU-12-303
Complainant,)	
)	NOTICE AND MOTION OF
v.)	DEFAULT
)	
Kindred Plumbing and Heating, Inc.)	
)	
Respondent.)	
)	
)	

On June 15, 2012, the Public Service Commission (Commission) received a Third Party Damage Complaint from Otter Tail Power Company (Ottetail). The third party complaint alleged a violation of the North Dakota One-Call law, North Dakota Century Code 49-23, by Kindred Plumbing and Heating, Inc (Kindred). On June 19, 2012 Christopher Marohl, Public Utility Analyst, mailed the Third Party Damage Complaint to Kindred Plumbing and Heating, 302 Woodlawn Dr., Kindred ND 58501 along with a cover letter requesting that Kindred provide to Commission Staff a written account of the event. A written response was not received from Kindred.

On March 22, 2013 a Formal Staff Complaint was filed with the Commission alleging Kindred to be in violation of N.D.C.C. §49-23. On March 27, 2013 the Commission found that the Complaint stated a prima facie case that Kindred was in violation of N.D.C.C. §49-23. On March 28, 2013 Cara DeSaye mailed a copy of the Complaint to Kindred via certified mail in accordance with Rule 4 of the North Dakota Rules of Civil Procedure. The Respondent was informed in the Complaint that it had

twenty (20) days after service of the Complaint to answer the same, or the Commission may deem the complaint to be admitted. The return receipt from the certified mailing indicates acceptance of delivery on April 1, 2013. The Respondent has failed to file an answer or a response to the complaint.

North Dakota Century Code §28-32-21(1)(e) states that “a Complaint may inform the Respondent that an answer must be served upon the complainant and the agency with which the complaint is filed within 20 days after service of the complaint, or the agency may deem the complaint to be admitted.” The Statute continues, “If the respondent fails to answer as required within twenty days of service of the complaint, the agency may enter an order in default as the facts and law may warrant.” NDCC §28-32-21(1)(e).

The Complaint was served upon the Respondent in accordance with the North Dakota Rules of Civil Procedure. Respondent was informed under NDCC §28-32-21(1)(e) that he had 20 days to respond to the Complaint. Respondent has not responded. Respondent has had one other violation of the North Dakota One Call law, NDCC 49-23.

THEREFORE, Complainant respectfully moves the Commission for entry of a default order, deeming Respondent to have admitted to the violation alleged in the complaint and levying a fine of \$1500 to be paid to the Commission.

Bismarck, North Dakota, this 20th day of May, 2013

By: 

Ryan Norrell, #06582
Legal Counsel
Advocacy Staff
North Dakota Public Service Commission
600 East Blvd. Ave Dept. 408
Bismarck, ND 58501
(701) 328-2421
rmnorrell@nd.gov

IT IS FURTHER ORDERED that Respondent, Kindred Heating and Plumbing, Inc., 302 Woodlawn Dr, Kindred, ND 58051 shall deposit the penal sum of \$1500 with the Commission.

PUBLIC SERVICE COMMISSION

**Randy Christmann
Commissioner**

**Brian P. Kalk
Chairman**

**Julie Fedorchak
Commissioner**