

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission,

Case No. PU-12-799

Complainant,

vs.

S. J. Louis Construction, Inc.

Respondent.

COMPLAINT

The North Dakota Public Service Commission Staff (Staff), for its complaint against S. J. Louis Construction, Inc., alleges and shows the following:

I

S. J. Louis Construction, Inc. (S. J. Louis) is a Minnesota corporation, registered with the North Dakota Secretary of State, with principal offices at 1351 W Broadway St., PO Box 459, Rockville, MN 56369-0459.

II

Reservation Telephone Cooperative (RTC) is a North Dakota cooperative association with principle offices at 24 N Main St, Parshall, North Dakota 58770-0068.

III

On November 29, 2012, the Commission received a Third Party Damage Complaint form from Alicia M. Brenna, attorney for RTC. The complaint alleged a

violation by S. J. Louis of North Dakota Century Code Chapter 49-23 and is attached as Exhibit 1.

IV

As part of the Third Party Damage Complaint, RTC included documentation proving that S. J. Louis obtained North Dakota One Call (One Call) ticket number 12141843 on September 4, 2012 at 8:04 AM for work to begin on September 6, 2012 at 8:00 AM.

V

As alleged by RTC, on September 6, 2012, S. J. Louis was excavating as defined under North Dakota Century Code section 49-23-01(7) to install city sewer near Highway 85 and 11th Avenue in Watford City, ND. As a result of this excavation, damage was caused to underground cable TV facilities of RTC resulting in the need for RTC to repair these damages at a cost of \$10,273.05.

VI

North Dakota Century Code § 49-23-05 (5) states:

To avoid damage to and minimize interference with underground facilities in and near the construction area, an excavator shall:
Conduct the excavation in a careful and prudent manner.

VII

S. J. Louis violated North Dakota Century Code Section 49-23-05 (5) by failing to conduct the excavation in a careful and prudent manner.

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 December 10, 2012 letter, Staff informed S. J. Louis of RTC's third party damage complaint filing, and asked for a response to the complaint of Otter Tail by December 24, 2012. A response, dated December 19, 2012, was received on December 20, 2012 by Staff, wherein S. J. Louis asserted it conducted its excavation in a careful and prudent manner.

XI

Commission records indicated that two other complaints have been filed regarding S. J. Louis. In Case No. PU-12-93, originated by Aux Sable Midstream LLC, S. J. Louis failed to provide an excavation or location notice as required by state law at least forty-eight hours before excavation. In Case No. PU-12-800, originated by RTC, S. J. Louis is alleged to have failed to excavate in a careful and prudent manner and damaged fiber optic and copper cable lines. S. J. Louis has indicated its desire to sign a consent order in Case No. PU-12-800.

XII

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 S. J. Louis 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 S. J. Louis 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 \$1,000.00.
3. Such other relief that the Commission finds just and proper.

Dated this 10th day of May 2013.



Patrick Fahn
Director, Compliance & Competitive Markets
Public Service Commission
State Capitol – 12th 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
S.J. Louis Construction, Inc.
Damage Prevention Enforcement

Case No. PU-12-799

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 November 29, 2012, Reservation Telephone Company filed a Third Party Damage Complaint form with the Public Service Commission (Commission) alleging a violation by S.J. Louis Construction of North Dakota Century Code Chapter 49-23.
4. That a true and correct copy of the Third Party Damage Complaint form filed by Reservation Telephone Company on November 29, 2012 and docketed in the captioned case, is attached.

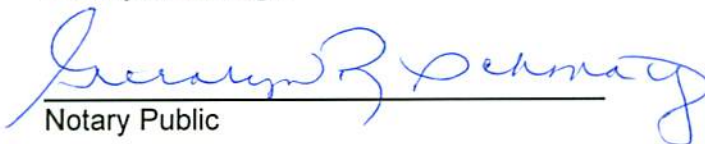
Dated this 10 day of May, 2013.

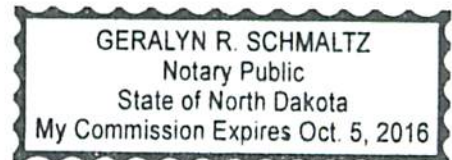
By: 
Patrick Fahn

Subscribed and sworn to before me
this 10th day of May, 2013.

County of Burleigh

SEAL


Notary Public





THIRD PARTY DAMAGE COMPLAINT

Public Service Commission
SFN 59067 (12-11)

PART A – WHO IS SUBMITTING THIS COMPLAINT

Information Being Submitted By <input type="checkbox"/> Individual <input checked="" type="checkbox"/> Company*	Company/Organization Reservation Telephone Cooperative	Person Filing Information Alicia M. Brenna	Position attorney
Address of Person Filing Information PO Box 68	City Parshall	State ND	Zip Code 58770
Telephone Number 701-675-2188	Email Address brennalaw@gmail.com	Date 11/29/2012	

PART B – WHO ALLEGEDLY VIOLATED THE ONE-CALL REGULATIONS

Name of Excavator S.J. Louis	Telephone Number 320-253-9291		
Address 1351 Broadway St. W	City Rockville	State ND	Zip Code 56369
Name of Entity for Which Excavation Was Performed City of Watford City	Telephone Number 701-444-2533		
Address PO Box 494	City Watford City	State ND	Zip Code 58854

PART C – DATE AND LOCATION OF THE EVENT

Date of Event 09/06/2012	Address of the Excavation and/or Damage Highway 85 and 11th Avenue		
County McKenzie	City Watford City	State ND	Zip Code 58854

PART D – FACILITY INVOLVED

Type of Facility Involved communications	Operator of Facility and Contact Person (if known) Reservation Telephone Cooperative		
Address PO Box 68	City Parshall	State ND	Zip Code 58770
Telephone Number 701-862-3115	Email Address (if known) brooksg@restel.com		
Brief Description of Facility Involved Excavator cut copper cable- 400 pair, also CATV cable - main line.			

PART E – DAMAGE (if applicable)

Fatalities	Injuries	Length of Hospitalization, if Applicable
Estimated Value of Property Damage: \$ \$10,273.05		Number of Customers Affected 45
Damaged Within <input checked="" type="checkbox"/> Public Property <input type="checkbox"/> Private Property		Photos of Damaged Facility <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If yes, please include copies)

PART F – EXCAVATION

Was a locate requested from North Dakota One-Call?	
<input checked="" type="checkbox"/> Yes Locate Ticket Number <input type="checkbox"/> No <input type="checkbox"/> Unknown	Start Date on Ticket: 09/06/2012
Did excavator wait until the start date/time on the ticket before commencing excavation?	
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> N/A	
Were buried facilities exposed by hand or non-invasive equipment prior to excavation?	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> N/A	

PART G – MARKING

Were facilities marked?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input 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 type="checkbox"/> N/A
Were the utility/facilities marked correctly?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input 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 type="checkbox"/> N/A
Did the excavator pre-mark with white paint?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown <input 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 type="checkbox"/> N/A
Did the excavator use reasonable care to maintain locate marks for the life of project?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> N/A

PART H – DESCRIPTION OF EVENT

Description of Event Locate ticket No. 12141843. The excavator was installing City sewer.

Description of Event Continued

[Empty box for description of event]

PART I – SIGNATURE

Signature of Person Filing Complaint /s/ Alicia M. Brenna	Date 11/29/12
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Please include additional documents and photos, if applicable.

***If you are filling 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 58505-0480
Telephone: (701) 328-2400

Email to the Commission