



Public Service Commission

State of North Dakota

COMMISSIONERS

Brian P. Kalk
Randy Christmann
Julie Fedorchak

Executive Secretary
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600 East Boulevard, Dept. 408
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May 3, 2013

S.J. Louis Construction, Inc.
ATTN: Michael J. Boufford, Risk Manager
P.O. Box 459
1351 W Broadway Street
Rockville, MN 56369-0459

Re: Third Party Damage Complaint
Case No. PU-12-800

Dear Mr. Boufford:

As discussed with Holly on a recent telephone call, enclosed are two copies of a consent order for the damage prevention case against S.J. Louis Construction, Inc., Case Number PU-12-800. Please review the document to ensure that you understand and agree to the terms. If so, please sign and date both copies, and mail both copies by May 17, 2013 to the address below.

North Dakota Public Service Commission
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505-0408

If you wish, the penalty payment can be made at the same time the signed Consent Order is returned, even though the penalty would not be due until 10 business days after the Commission signs the Consent Order.

If you have any questions please call or e-mail me at 701-328-4077 or pfahn@nd.gov.

Best regards,

A handwritten signature in cursive script that reads "Patrick Fahn".

Patrick Fahn
Director, Compliance and Competitive Markets

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
S.J. Louis Construction, Inc.
Damage Prevention Enforcement**

Case No. PU-12-800

CONSENT ORDER

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

1. 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.
2. Reservation Telephone Cooperative (RTC) is a North Dakota cooperative association with principle offices at 24 N Main St, Parshall, North Dakota 58770-0068.
3. 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.
4. North Dakota Public Service Commission Staff (Staff) conducted an investigation including communication with S.J. Louis, RTC, and North Dakota One Call (One Call).
5. Based on its investigation, Staff determined that on May 3, 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 RTC's fiber optic line resulting in the need for RTC

to repair these damages at a cost of approximately \$16,000. S.J. Louis did have a One-Call Locate Ticket (Ticket No. 12035648).

6. As required under North Dakota Century Code § 49-23-04 (3), RTC located and marked or otherwise provided the approximate horizontal location of its underground facilities.

7. North Dakota Century Code § 49-23-05 (5) states that 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.

8. North Dakota Century Code § 49-23-06 (2a) states:

If an excavator fails to comply with this chapter or damages an underground facility, the excavator is liable for all damages caused by the failure to comply with this chapter and for all damages to the facilities and must reimburse the operator for the cost of repair and restoration, loss of product, and interruption of service occurring because of the damage or injury to the facilities, together with reasonable costs and expenses of suit, including reasonable attorney's fees.

9. North Dakota Century Code section 28-32-22 states:

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.

10. North Dakota Administrative Code section 69-02-04-05 states:

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.

11. Based on its investigation, Staff concluded that 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. As a result, S.J. Louis paid damages to RTC in compliance with North Dakota Century Code Section 49-23-06.

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. S.J. Louis has had a prior violation of the North Dakota One Call law, Case No. GS-12-53, and another alleged violation of the North Dakota One Call law, Case No. PU-12-799.

14. S.J. Louis 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 S.J. Louis 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, S.J. Louis and the Commission have agreed to enter into the following order.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

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

DATED this ___ day of _____, 2013.

PUBLIC SERVICE COMMISSION

**Randy Christmann
Commissioner**

**Brian P. Kalk
Chairman**

**Julie Fedorchak
Commissioner**

CONSENT TO ENTRY OF ORDER

The undersigned, on behalf of S.J. Louis Construction, Inc. states that he is authorized to act on behalf of S.J. Louis Construction, Inc. and bind S.J. Louis Construction, Inc. for purposes of this Consent Order, 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 S.J. Louis Construction, Inc. 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 ____ day of _____, 2013.

S.J. Louis Construction, Inc.

By _____

Its _____
{TITLE}



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 04/20/2012	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 fiber optic line - 24 fiber, also copper cable - 50 pair.			

PART E – DAMAGE (If applicable)

Fatalities	Injuries	Length of Hospitalization, If Applicable
Estimated Value of Property Damage: \$ \$15,996.75		Number of Customers Affected 120
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?		Start Date on Ticket
<input checked="" type="checkbox"/> Yes Locate Ticket Number		04/23/2012
<input type="checkbox"/> No		
<input type="checkbox"/> Unknown		
Did excavator wait until the start date/time on the ticket before commencing excavation?		
<input type="checkbox"/> Yes	<input checked="" 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 checked="" type="checkbox"/> Yes	<input 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. 12035648
The excavator was installing City sewer.

Description of Event Continued

[Empty box for Description of Event Continued]

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 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 58505-0480
Telephone: (701) 328-2400

Email to the Commission