

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission,

Case No. PU-13-36

Complainant,

vs.

Shane Swanson

Respondent.

COMPLAINT

The North Dakota Public Service Commission Staff (Staff), for its complaint against Shane Swanson alleges and shows the following:

I

Shane Lee Swanson, dba F-M Concrete, is registered with the North Dakota Secretary of State with the address of 304 Probsfield, Georgetown, MN 56546.

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 January 9, 2013, Otter Tail filed a Third Party Damage Complaint form with the North Dakota Public Service Commission (Commission). The Complaint form filed by Otter Tail and an affidavit of Patrick Fahn, Director of Compliance and Competitive

Markets, Commission, are attached as Exhibit 1. Otter Tail alleged a violation by Shane Swanson of North Dakota Century Code Chapter 49-23.

IV

Staff conducted an investigation including communication with Shane Swanson, Otter Tail, and North Dakota One Call (One Call).

V

In a letter dated January 22, 2013, Staff provided Shane Swanson a copy of Otter Tail's third party damage complaint filing, and asked for a response to the complaint of Otter Tail by February 6, 2013. Shane Swanson responded to the Staff with his version of events on February 25, 2013. In his response, Shane Swanson confirmed that he had not called One Call for a locate ticket.

VI

Based on its investigation, Staff determined that on or about November 15, 2012 Shane Swanson performed an excavation as defined under North Dakota Century Code section 49-23-01(7) in order to pour concrete at 2111 15th Street North in Wahpeton, ND. Shane Swanson violated North Dakota Century Code Chapter 49-23 by failing to contact the notification center, One Call, and provide an excavation or location notice at least forty-eight hours before beginning the excavation. The underground facilities had not been located prior to the excavation. During the excavation, damage was caused to the lining of an underground electric cable belonging to Otter Tail resulting in the need for Otter Tail to repair these damages at a cost of approximately \$4400.

VII

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

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

In a February 26, 2013 phone call with Shane Swanson, Shane Swanson agreed to sign and return a consent order and pay a fine. Staff sent Shane Swanson the Consent Order. Since this time, Staff has called Shane Swanson at least once weekly and each time Staff spoke to Shane Swanson he indicated he will be or has sent the signed Consent Order back to the Staff. As of April 4, 2013, no signed Consent Order has been received.

XI

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 Shane Swanson 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 Shane Swanson 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 \$2,000.00.
3. Such other relief that the Commission finds just and proper.

Dated this 4th day of April 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
Shane Swanson
Damage Prevention Enforcement

Case No. PU-13-36

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 January 9, 2013, Otter Tail Power Company filed a Third Party Damage Complaint form with the Commission alleging a violation by Shane Swanson 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 January 9, 2013 and docketed in the captioned case, is attached.

Dated this 4th day of April, 2013.

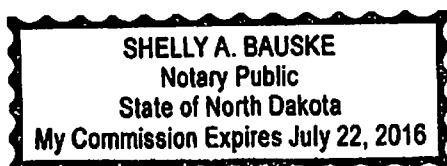
By: Patrick Fahn
Patrick Fahn

Subscribed and sworn to before me
this 4th day of April, 2013.

County of Burleigh

SEAL

Shelly A. Bauske
Notary Public





THIRD PARTY DAMAGE COMPLAINT
 Public Service Commission
 SFN 59067 (11-12)

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 Co.	Person Filing Information Scott Fritz	Position One Call Admin./Civil Design	
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 1/9/13	

PART B – WHO ALLEGEDLY VIOLATED THE ONE-CALL REGULATIONS

Name of Excavator Shane Swanson		Telephone Number 701-212-5400		
Address 304 Probstfield St	City Georgetown	State Mn	Zip Code 56546	
Name of Entity for Which Excavation Was Performed Westway Trading Company		Telephone Number		
Address 16450 36th St SE	City Mapleton	State ND	Zip Code 58059	

PART C – TIME AND LOCATION OF THE EVENT

Date and Time of Event December 26th	Address of the Excavation and/or Damage 16450 36th St SE			
County Cass	City Mapleton	State ND	Zip Code 58059	

PART D – FACILITY INVOLVED

Type of Facility Involved Electric Utility	Operator of Facility and Contact Person (if known) Otter Tail Power Company			
Address 2111 15th St N	City Wahpeton	State Nd	Zip Code 58075	
Telephone Number 701-842-6684	Email Address (if known) GCoyne@otpc.com			
Brief Description of Facility Involved On Dec 26, 2012 we were called to Westway Trading Co. in Mapleton, Nd. as they were single phasing. Otter Tail Power used fault locating equipment and determined the fault was located under a concrete pier that was recently installed. Personnel contacted Westway who in turn contacted contractor who admitted he did not call in a locate. He stated the owner of the building told him it was clear to dig. We will be sending a bill for our time on December 26th with an estimated cost of \$4400.00 to the contractor and notifying the North Dakota Public Service Commission as the work was done without a locate. Pictures of the site are available and will be sent to the appropriate ND PUC contacts.				

MAPLETON, ND,

WAAP. CSC,

PART E – DAMAGE (if applicable)

Fatalities None	Injuries None	Length of Hospitalization, if Applicable None
Estimated Value of Property Damage: \$ \$4400		Number of Customers Affected 17
Damaged Within <input type="checkbox"/> Public Property <input checked="" type="checkbox"/> Private Property		Photos of Damaged Facility <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (If yes, please include copies)

PART F – EXCAVATION

Was a locate requested from North Dakota One-Call? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown	Locate Ticket Number	Start Date on Ticket
Did excavator wait until the start date/time on the ticket before commencing excavation? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input checked="" 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 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 24 inches horizontally?	<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 H – DESCRIPTION OF EVENT

<p>Description of Event</p> <p>On Dec 26, 2012 we were called to Westway Trading Co. in Mapleton, Nd. as they were single phasing. Otter Tail Power used fault locating equipment and determined the fault was located under a concrete pier that was recently installed. Personnel contacted Westway who in turn contacted contractor who admitted he did not call in a locate. He stated the owner of the building told him it was clear to dig. We will be sending a bill for our time on December 26th with an estimated cost of \$4400.00 to the contractor and notifying the North Dakota Public Service Commission as the work was done without a locate. Pictures of the site are available and will be sent to the appropriate ND PUC contacts.</p>
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Description of Event Continued

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PART I - SIGNATURE

Signature of Person Filing Complaint

Scott Fritz

Date

1/9/13

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

Fitz, Scott

From: Coyne, Gerl
Sent: Monday, December 31, 2012 10:15 AM
To: Fitz, Scott
Subject: FW: 1226121433a.jpg; No Name_b.txt; 1226121433.jpg; 1226121433_9.jpg
Attachments:

Scott -

Here are pictures of the property damage at Mapleton last week. The dig-in was at Westway Trading 16400 36th St SE Mapleton. Estimated cost \$4400. You have the rest of the info by separate email. Let me know if you need more stuff.

Thanks,

Gerl

From: Ogren, Dwight
Sent: Thursday, December 27, 2012 4:45 PM
To: Coyne, Gerl
Subject: FW:

This is the best I got.

From: 7013887342@vzwplk.com [mailto:7013887342@vzwplk.com]
Sent: Thursday, December 27, 2012 4:44 PM
To: Ogren, Dwight
Subject:

Fritz, Scott

From: Coyne, Geri
Sent: Thursday, December 27, 2012 2:13 PM
To: Fritz, Scott
Subject: ug cable location

Scott –

On December 26, 2012, we were called to Westway Trading Company, Mapleton ND as they were single phasing. The Service Rep checked things out and determined it was an ug cable fault. The Wahpeton crew went with the fault locating equipment. The fault was located under a concrete pier which had recently been installed. They contacted the manager of Westway Trading, who in turn called the individual that poured the concrete. The contractor admitted he did not call in a locate- he stated the owner of the building told him it was clear to dig.

We will be sending him a bill for our time on Dec 26th. Included with the bill I will include a letter stating that it is the law to call in for a locate and that we will be following procedures to inform the state of the work that was done without a locate request.

Contractor's name is Shane Swanson 304 Probstfield St Georgetown, MN 56546 701-212-5400 is his phone #.

I will forward pictures once I get them. What else do you need for the filing?

Thanks,

Gerri Coyne

Gerri Coyne
Operations Manager
Oller Tall Power Company
PO Box 70
Wahpeton, ND 58074
e-mail: gcoyne@olpco.com
Phone: 701-671-6001
Fax: 701-671-6031
Cell: 701-899-1514

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