

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
Tom's Backhoe Service, Inc.  
Damage Prevention Complaint

Case No. GS-13-712

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 13<sup>th</sup> day of **March, 2014**, 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 Hearing  
Formal Complaint of North Dakota Public Service Commission**

The envelope was addressed as follows:

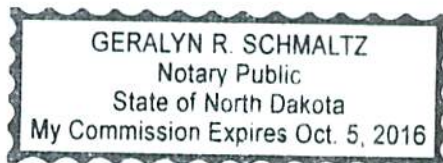
Tom Thompson  
Tom's Backhoe Service, Inc.  
323 Woodland Hills Ln  
Brainerd MN 56401-6514

**Cert. No. 7013 2630 0001 2317 0767**

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

Subscribed and sworn to before me  
this 13<sup>th</sup> day of **March, 2014**.

SEAL



*Cara DeSaye*  
\_\_\_\_\_  
*Geraldine Schmaltz*  
\_\_\_\_\_  
Notary Public

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

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Tom's Backhoe Service, Inc.  
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NOTICE OF HEARING

March 12, 2014

On March 6, 2014, Public Service Commission Advocacy Staff filed a formal complaint alleging violation of the North Dakota One-Call law, N.D.C.C. Chapter 49-23, and requesting the Commission find Tom's Backhoe Service, Inc. responsible for violating the One Call law and impose a penalty of \$500.

On March 12, 2014, the Public Service Commission found the Complaint states a prima facie case and directed that the complaint be served on the Respondent, Tom's Backhoe Service, Inc.

A public hearing on this matter will be held commencing on **May 1, 2014 at 9:00 a.m. CDT** in the Commission Hearing Room, State Capitol, 12th Floor, Bismarck, North Dakota 58505. The issues to be considered are:

1. Has Tom's Backhoe Service, Inc. violated N.D.C.C. Chapter 49-23, the North Dakota One-Call law?
2. If a violation is found, should the Commission impose a civil penalty in the amount of \$500.00?

For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400 or 877-245-6685 (toll free in North Dakota), or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials, please notify the Commission at least 24 hours in advance.

PUBLIC SERVICE COMMISSION

  
Randy Christmann  
Commissioner

  
Brian P. Kalk  
Chairman

  
Julie Fedorchak  
Commissioner

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

**Public Service Commission,**

**Case No. PU-13-712**

**Complainant,**

**vs.**

**Tom's Backhoe Service Inc.**

**Respondent.**

**COMPLAINT**

The North Dakota Public Service Commission Staff (Staff), for its complaint against Tom's Backhoe Service, Inc., alleges and shows the following:

I

Tom's Backhoe Service, Inc. (Tom's Backhoe) is a Minnesota corporation with principal offices at 323 Woodland LN in Brainerd, MN 65401-6514.

II

Montana-Dakota Utilities Co (MDU) is a North Dakota corporation with principal offices at 400 N 4th St, Bismarck, ND 58501-4022.

III

N.D.C.C. § 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.

#### IV

On July 26, 2013, the Commission received a Third Party Damage Complaint form from Mike Schoepp, Region Gas Superintendent for MDU. The complaint alleged a violation by Tom's Backhoe of N.D.C.C. ch. 49-23: One-Call Excavation Notice System and is attached as Exhibit 1.

#### V

After investigation, staff determined that on July 19, 2013, Tom's Backhoe personnel provided an excavation notice to the NDOC Notification Center with work to begin on July 23, 2013. The NDOC Notification Center assigned a locate ticket number 13106871 to the excavation notice.

#### VI

As alleged by MDU in the Third Party Damage Complaint, on July 26, 2013, Tom's Backhoe began an excavation as defined under N.D.C.C. § 49-23-01(7) at 3500 SW 4th St in the city of Minot, in Ward County, North Dakota. As a result of this excavation, damage was caused to a 1 inch gas service line. MDU alleges that the cost to repair these damages was approximately \$401.11. MDU alleges that it has not been reimbursed.

#### VII

By its August 16, 2013 letter, Staff informed Tom's Backhoe of MDU's third party damage complaint filing, and asked for a response to the complaint of MDU by September 10, 2013. A response, was received on September 6, 2013 by Staff, wherein Tom's Backhoe asserted that there was no negligence in locating this line, that

they used reasonable care to maintain locate marks for the life of the project, that they called in relocates every nine days for the life of the project, and that they did what they could do for reasonable care. They stated that they had crossed this line eleven times within 1500 feet and they did not expect such a variation in depth. Tom's Backhoe stated that, where they potholed this line, it was 36 inches deep.

#### VIII

Tom's Backhoe violated N.D.C.C. § 49-23-05(5) by failing to conduct the excavation in a careful and prudent manner.

#### 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

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.

XI

North Dakota Century Code section 28-32-21(1)(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 the respondent 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 Tom's Backhoe in violation of N.D.C.C. ch.49-23 for failing to comply with the One Call procedures outlined in N.D.C.C. § 49-23-05.
2. That the Commission impose a civil penalty in the amount of \$500.00.
3. Such other relief that the Commission finds just and proper.

Dated this 6 day of March, 2014



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



**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 Montana Dakota Utilities	Person Filing Information Mike Schoepp	Position Region Gas Superintendent	
Address of Person Filing Information PO Box 1457	City Bismarck		State ND	Zip Code 58502
Telephone Number 701-224-5814	Email Address micheal.schoepp@mdu.com		Date 7/26/13	

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

Name of Excavator Tom's Backhoe		Telephone Number 218-828-4232		
Address 323 Woodland Hills Lane	City Brainerd	State MN	Zip Code 56401	
Name of Entity for Which Excavation Was Performed city of Minot		Telephone Number		
Address	City	State	Zip Code	

**PART C – TIME AND LOCATION OF THE EVENT**

Date and Time of Event 7/26 @ 12:30 pm	Address of the Excavation and/or Damage 3500 SW 4th Street			
County Ward	City Minot	State ND	Zip Code 58701	

**PART D – FACILITY INVOLVED**

Type of Facility Involved natural gas line	Operator of Facility and Contact Person (if known) MDU - Mike Schoepp			
Address PO Box 1457	City Bismarck	State ND	Zip Code 58502	
Telephone Number 701-224-5814	Email Address (if known) micheal.schoepp@mdu.com			
Brief Description of Facility Involved 1" service line feeding building.				

**PART E – DAMAGE (if applicable)**

Fatalities none	Injuries none	Length of Hospitalization, If Applicable n/a
Estimated Value of Property Damage: \$ \$500		Number of Customers Affected 1
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 <span style="border: 1px solid black; padding: 2px;">7/23/13</span>
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 type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" 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 type="checkbox"/> No <input checked="" 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
contractor hit 1" service line, said he thought it was the same depth as the other service down the road.

<b>Description of Event Continued</b>
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**PART I – SIGNATURE**

Signature of Person Filing Complaint <b>Mike Schoepp</b>	Date <b>7/26/13</b>
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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**