

IV

N.D.C.C. § 49-23-06(1)(a) provides:

If any damage occurs to an underground facility or its protective covering, the excavator shall notify the operator as soon as reasonably possible.

V

N.D.C.C. § 49-23-06(1)(c) provides:

An excavator who knowingly damages an underground facility and who does not notify the operator as soon as reasonably possible or who backfills in violation of subdivision b is guilty of a class A misdemeanor.

VI

On September 17, 2013, the Commission received a Third Party Damage Complaint from Paul Reily, District Gas Superintendent for MDU, attached as Exhibit 1, alleging a violation by Selland of N.D.C.C. ch. 49-23, the One-Call Excavation Notice System.

VII

By its October 10, 2013 letter, Staff informed Selland of MDU's complaint filing, and asked for a response by November 1, 2013. Selland's October 21, 2013 response asserted that the gas line damaged was not an active line and thus the severity should be looked at in a different context than that of an active line.

VIII

As alleged by MDU's complaint, on July 19, 2013, Selland began an excavation as defined in N.D.C.C. § 49-23-01(7) while installing the natural gas distribution system and other utilities at Meadows Subdivision, corner of 70th Street East and University

Avenue North, Williston, North Dakota. As a result of Selland excavating a common trench for these utility installations, damage was caused on July 19, 2013, to three gas service lines, a 2-inch gas main, and a 4-inch gas main, all owned and operated by MDU. MDU alleges that the cost to repair its facilities was approximately \$3266.86.

IX

Based on its investigation, Staff determined that on July 12, 2013, Selland personnel provided an excavation notice to the North Dakota One Call (NDOC) Notification Center with work to begin on July 16, 2013 at 70th St E and 2nd Ave W in Williston, ND. The NDOC Notification Center assigned locate ticket number 13099771 to the excavation notice. The underground facilities were located and marked as accurately as possible, and the facility marks were visible in the area of excavation. On July 19, 2013, Selland personnel began an excavation of a common trench for installation of the natural gas distribution system and other utilities. As a result of this excavation, damage was caused by mechanized equipment to MDU facilities. MDU was not notified of the damage until July 24, 2013. No customers were affected. Selland reimbursed MDU for the damages.

X

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

XI

Selland violated N.D.C.C. § 49-23-06(1)(a) by failing to notify the operator as soon as reasonably possible of damage caused to an underground facility.

XII

North Dakota Century Code § 49-07-01.1 provides:

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.

XIII

The North Dakota Public Service Commission Damage Prevention Plan provides:

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.

XIV

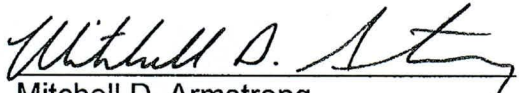
The Respondent must serve an answer to this complaint upon the Complainant and the Commission within twenty days after service of the complaint, or the Commission may deem the complaint to be admitted. Answers must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure.

Prayer for Relief

Based on the foregoing, Staff seeks the following relief:

1. That the Commission find Selland Construction Inc. in violation of N.D.C.C. ch.49-23 for failing to comply with the One Call requirements enumerated in N.D.C.C. § 49-23-05, and impose a penalty in the amount of \$1,000.00.
2. In addition, that the Commission find Selland Construction Inc. in violation of N.D.C.C. ch.49-23 for failing to comply with the One Call requirements enumerated in N.D.C.C. § 49-23-06(1)(a), and impose a penalty in the amount of \$1,000.00.
3. Such other relief that the Commission finds just and proper.

Dated this 8th day of July, 2014


Mitchell D. Armstrong
Special Assistant Attorney General
122 East Broadway Avenue
P.O. Box 460
Bismarck, North Dakota 58502-0460
(701) 258-0630
ND State Bar ID No. 05892
Attorney for Advocacy Staff

and

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 Co.	Person Filing Information Paul Riely	Position District Gas Superintendent
Address of Person Filing Information 220 2nd Ave E, PO Box 1406	City Williston	State ND	Zip Code 58802-1406
Telephone Number (701)572-1614	Email Address paul.riely@mdu.com	Date 08 August, 2013	

PART B – WHO ALLEGEDLY VIOLATED THE ONE-CALL REGULATIONS

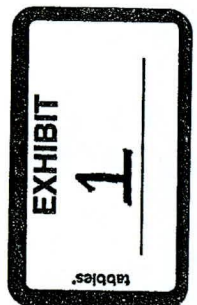
Name of Excavator Selland Construction	Telephone Number (509) 662-7119
Address 5805 Sherman Lane	City Williston
State ND	Zip Code 58801
Name of Entity for Which Excavation Was Performed Selland Construction	Telephone Number (509) 662-7119
Address 5805 Sherman Lane	City Williston
State ND	Zip Code 58801

PART C – TIME AND LOCATION OF THE EVENT

Date and Time of Event Multiple	Address of the Excavation and/or Damage Meadows Subdivision, corner of 70th St E and University Ave N
County Williams	City Williston
State ND	Zip Code 58801

PART D – FACILITY INVOLVED

Type of Facility Involved Natural Gas Distribution System	Operator of Facility and Contact Person (if known) Montana-Dakota Utilities Co., Paul Riely
Address 220 2nd Ave E, PO Box 1406	City Williston
State ND	Zip Code 58802-1406
Telephone Number (701) 572-1614	Email Address (if known) paul.riely@mdu.com
Brief Description of Facility Involved Contractor damaged three natural gas service lines, a four inch natural gas main line, and a two inch natural gas main line.	



PART E – DAMAGE (if applicable)

Fatalities None	Injuries None	Length of Hospitalization, If Applicable None
Estimated Value of Property Damage: \$ \$2380.66		Number of Customers Affected None
Damaged Within <input type="checkbox"/> Public Property <input checked="" 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	Start Date on Ticket: <input type="text" value="07/16/2013"/>
<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 type="checkbox"/> No <input checked="" 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 type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unknown <input 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 checked="" 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 type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" 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 type="checkbox"/> No <input checked="" type="checkbox"/> Unknown <input type="checkbox"/> N/A

PART H – DESCRIPTION OF EVENT

<p>Description of Event</p> <p>While installing the natural gas distribution system in the Meadows Subdivision in the City of Williston, state of North Dakota the contractor made contact with our facilities three separate times.</p> <p>The first time a natural gas service line was struck, and repaired on location at the time of contact.</p> <p>On July 19, 2013 while installing other utilities, the contractor made contact with a four inch main at the point where it tied in with a two inch main branch line, they also made contact with a service line. Montana-Dakota Utilities (MDU) were not made aware of this contact until 24 July, 2013. During this six day time frame Williston, ND received rainfall causing the natural gas main to become contaminated with dirt and water. This caused MDU to excavate and replace over thirty feet of four and two inch gas main line as well as repairing a damaged service line. When the system was tested, the third contact damage to a service line was found which took extensive investigation to find and repair.</p>
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Description of Event Continued

PART I - SIGNATURE

Signature of Person Filing Complaint <i>Paul W. Riehl</i>	Date <i>17 September 2013</i>
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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



MONTANA-DAKOTA

UTILITIES CO.

A Division of MDU Resources Group, Inc.

220 2nd Ave East
P.O. Box 1407
Williston, ND 58802-1406
(701) 572-2152

September 13, 2013

Public Service Commission
600 E Blvd. Ave. Dept. 408
Bismarck, ND 58505-0480

To whom it may concern;

In response to the request at the bottom of the Third Party Damage Complaint form, SFN 59067 (11-12), regarding my authority to file a complaint on behalf of a company, please refer to the following information.

As the District Gas Superintendent for the Williston District of Montana-Dakota Utilities, I am “responsible for construction, operation, and maintenance of the gas transmission and distribution systems; and providing safe, reliable, economic service to our customers.” This includes responding to any problems found with excavators working in vicinity with our natural gas system.

If you have any questions, feel free to contact me.

Sincerely

Paul Riely
District Gas Superintendent
(701) 572-1614
paul.riely@mdu.com