

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Plote Construction ND, LLC
Damage Prevention Enforcement

Case No. GS-14-216

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Geralyn R. Schmaltz deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **29th day of February, 2016**, she deposited in the United States Mail, at Bismarck, North Dakota, **two** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and containing photocopy of:

- **Cover Letter For Refiled Formal Complaint**
- **Refiled Formal Complaint With Attached Exhibit 1**
- **Formal Complaint**
- **Motion Finding Complaint States a *Prima Facie* Case**
- **Affidavit of Service by Certified Mail**

The envelopes were addressed as follows:

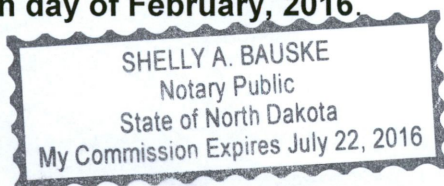
Maurice Schurger
Plote Construction ND, LLC
908 Elk Street
Alexander, ND 58831
Cert. No. 7015 3010 0000 6559 9296

Corporation Service Company
Registered Agent for Plote Construction ND, LLC
1709 N 19th St. Suite 3
Bismarck, ND 58501-2121
Cert. No. 7015 3010 0000 6559 9289

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

Subscribed and sworn to before me
this **29th day of February, 2016**.

SEAL



Geralyn R. Schmaltz

Shelly A. Bauske
Notary Public

11 GS-14-216 Filed: 2/29/2016 Pages: 25
Affidavit of Service, Cert. Mail - Refiled Formal
Complaint with Exhibit & Commission Motion

February 24, 2016

Mr. Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-4080

RE: Public Service Commission
Plote Construction ND, LLC
Damage Prevention Enforcement
GS-14-216

Dear Mr. Nitschke:

On February 3, 2013, Advocacy Staff (Staff) filed a Formal Complaint in Public Service Commission Case No. GS-14-216. Staff inadvertently failed to attach the April 29, 2014 letter referenced in Section V of the Formal Complaint.

Enclosed for filing, please find a copy of the Formal Complaint filed February 3, 2016 along with the referenced April 29, 2014 letter.

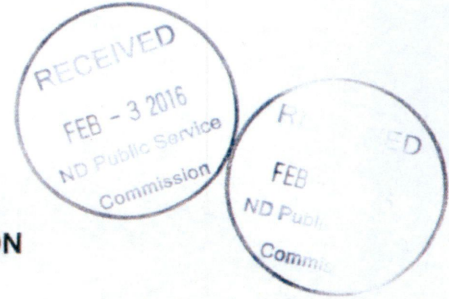
Sincerely,



John M. Schuh
Advocacy Counsel

Enclosures

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



Public Service Commission
Plote Construction ND, LLC
Damage Prevention Enforcement

Case No. GS-14-216

Public Service Commission,)
Complainant,)
vs.)
Plote Construction ND, LLC)
Respondent.)

Complaint

The North Dakota Public Service Commission Advocacy Staff (Staff), for its complaint against Plote Construction ND, LLC, alleges and shows the following:

I

Plote Construction ND, LLC (Plote) is a registered North Dakota company with offices located at 1100 Brant Dr, Hoffman Estates, IL 60192-1676.

II

Montana-Dakota Utilities Company (MDU) is a registered Delaware corporation with offices located at 1200 West Century Avenue, Bismarck, ND 58506-5650.

III

North Dakota Century Code section 49-23-05(5) provides:

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.

North Dakota Century Code section 49-23-01(3) provides:

“Careful and prudent manner” means excavating within twenty-four inches [60.96 centimeters] of the outer edges of an underground facility located manually and marked by the owner or operator by stakes, paint, or other customary manner, and supporting and protecting the uncovered facility.

North Dakota Century Code section 49-23-05 provides:

To avoid damage to and minimize interference with underground facilities in and near the construction area, an excavator shall:

1. Maintain a clearance between an underground facility and the cutting edge or point of any mechanized equipment, considering the known limit of control of the cutting edge or point to avoid damage to the facility.
2. Provide support in a manner approved by the operator for underground facilities in and near the construction area, including backfill operations to protect the facilities. Backfill must be of a material equal to or better in both quality and quantity to the existing backfill.
3. Assume ownership of materials used to mark the facility, use reasonable efforts to maintain markings during excavation, and when possible remove all tangible marking materials used to mark the facility.
4. Assume the cost of excavation to expose the facility unless otherwise indicated by owner of facility.
5. Conduct the excavation in a careful and prudent manner.
6. Properly manage spoil material to prevent shifting or falling material that could damage belowground facilities.

North Dakota Century Code section 28-32-22 provides:

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.

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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 chapters 49-22 and 49-23, shall, in addition to any other penalty provided, be subject to a civil penalty of not to exceed five thousand dollars. A violation occurring under chapter 49-23, in addition to any other penalty, is subject to a civil penalty not to exceed twenty-five thousand dollars. The commission shall develop policies for the assessment of penalties under chapter 49-23 which will take into consideration the severity of damages and the conduct of the offender. 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.

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IV

On April 14, 2014, the Commission received a ND One-Call Complaint from Paul Riely, District Gas Superintendent for MDU. The complaint alleges a violation by Plote of North Dakota Century Code section 49-23-04(1) of the One-Call Excavation Notice System.

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By its April 29, 2014 letter, attached as Exhibit 1, Staff informed Plote of MDU's complaint filing, and requested a response by May 20, 2014. Plote's May 8, 2014

response asserted that Plote was told by the general contractor for the site that utility service to the site would be turned off on the date of the excavation.

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As alleged by MDU's complaint, on February 18, 2014, Plote began an excavation as defined in North Dakota Century Code section 49-23-01(7) while digging footings for a maintenance building at 621 East 42nd Street in Williston, North Dakota. As a result of this excavation, damage was caused by a back-hoe to MDU's 2-inch medium pressure natural gas main distribution line causing an unintentional release of gas. MDU alleges that the cost to repair its facilities was approximately \$1051.41.

VII

Based on its investigation Staff determined that Plote personnel provided an excavation notice to the North Dakota One Call Notification Center (NDOC) on January 30, 2014, with work to begin in the area cited in the complaint to begin on February 3, 2014. The NDOC assigned locate ticket number 14006256 to the excavation notice, which indicates the work was being performed was underground utility, attached as Exhibit 3. Under North Dakota Century Code section 49-23-04(3)(g), the expiration date for the locate ticket is February 24, 2014. On February 18, 2014, Plote personnel began an excavation to dig footings for a maintenance building. Plote notified MDU of the damage on February, 18, 2014. No customers lost service as the area was a new residential development under construction. MDU has been reimbursed for cost of the damages from the excavation.

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

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X

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.

XI

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

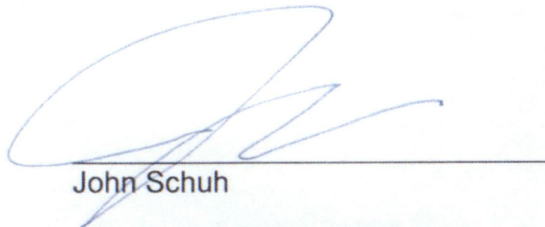
Commission may deem the complaint to be admitted. Answers must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure.

Prayer for Relief

Based on the foregoing, Staff seeks the following relief:

1. That the Commission find Plote in violation of North Dakota Century Code ch.49-23 for failing to comply with the One Call requirements enumerated in North Dakota Century Code section 49-23-05(5).
2. That the Commission impose an appropriate civil penalty up to \$25,000, but at least \$2000.
3. Such other relief that the Commission finds just and proper.

Dated this 3rd day of February, 2016



John Schuh

Public Service Commission Advocacy Counsel
State Capitol – 12th Floor
600 E Boulevard Ave – Dept. 408
Bismarck, North Dakota 58505-0480
701-328-2412

Victor Schock
Public Utility Analyst
Public Service Commission Advocacy Staff
State Capitol – 12th Floor
600 E Boulevard Ave – Dept 408
Bismarck, North Dakota 58505-0480
701-328-3397



Public Service Commission
State of North Dakota

COMMISSIONERS

Brian P. Kalk
Randy Christmann
Julie Fedorchak

Executive Secretary
Darrell Nitschke

600 East Boulevard, Dept. 4
Bismarck, North Dakota 58505-0
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2444
ND Toll Free: 1-877-245-6444
Fax: 701-328-2444
TDD: 800-366-6888 or 701-328-2444

April 29, 2014

CASE GS-14-216

Maurice Schurger
Plote Construction ND, LLC
P.O. Box 408
Alexander, ND 58831

Re: Third Party Damage Complaint

Dear Mr. Schurger:

Enclosed is a copy of a Third Party Damage Complaint against PLOTE CONSTRUCTION ND, LLC, (PLOTE) received by the North Dakota Public Service Commission (Commission) on February 14, 2014, from MONTANA DAKOTA UTILITIES (MDU). The location of the damage was at 621 E 42nd St, in the county of Williams, in the city of Williston, in North Dakota.

Please respond to the Third Party Complaint by **May 20, 2014**, with your written account of the event. Your response, the complaint, and other available information will be reviewed to determine whether Commission staff will file a formal complaint.

Your response should also address the following criteria used to determine the amount of civil penalty, if any, to be recommended by Commission staff as part of a formal complaint:

- a) The nature, circumstances, and severity of the complaint;
- b) The degree of suspected fault on the part of PLOTE;
- c) PLOTE's history of prior violations or complaints;
- d) PLOTE's ability to pay;
- e) Any good faith effort by PLOTE's in attempting to achieve compliance; and
- f) The effect the penalty may have on PLOTE's ability to continue in business.

North Dakota Century Code section 49-07-01.1 provides for a civil penalty not to exceed twenty five thousand dollars for violations of the One Call law.

Please send or e-mail written response to the Commission at the address above or call me at 701-220-5779.

Best regards,

Aaron A Morman
Pipeline Safety Inspector/Program Manager

C. Paul Reily-MDU

3 GS-14-216 Filed: 4/29/2014 Pages: 1
Letter enclosing third-party damage complaint

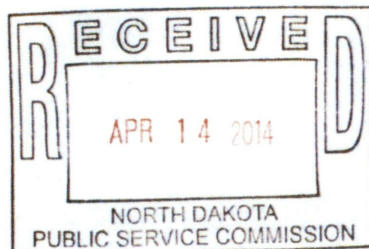


MONTANA-DAKOTA

UTILITIES CO.

A Division of MDU Resources Group, Inc

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



April 14, 2014

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



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 PO Box 1406	City Williston	State ND	Zip Code 58802	
Telephone Number 701-572-1614	Email Address paul.riely@mdu.com		Date 25 February 2014	

PART B – WHO ALLEGEDLY VIOLATED THE ONE-CALL REGULATIONS

Name of Excavator Plote Construction		Telephone Number 701-577-9000	
Address 14025 Bennett Loop	City Williston	State ND	Zip Code 58801
Name of Entity for Which Excavation Was Performed Sterling Construction Corporation		Telephone Number	
Address 3900 Edison Lakes Parkway, Suite 201	City Mishawaka	State IN	Zip Code 46546-2008

PART C – TIME AND LOCATION OF THE EVENT

Date and Time of Event 2/18/14, 1500 hours	Address of the Excavation and/or Damage 621 E 42nd St		
County Williams	City Williston	State ND	Zip Code 58801

PART D – FACILITY INVOLVED

Type of Facility Involved Gas Distribution Main Line	Operator of Facility and Contact Person (if known) Montana-Dakota Utilities Co., Paul Riely		
Address 220 2nd Ave East	City Williston	State ND	Zip Code 58801
Telephone Number 701-572-1614	Email Address (if known) paul.riely@mdu.com		
Brief Description of Facility Involved loop fed 2" PE medium pressure natural gas distribution main line			

PART E – DAMAGE (if applicable)

Fatalities None	Injuries none	Length of Hospitalization, If Applicable na
Estimated Value of Property Damage: \$ \$1051.41		Number of Customers Affected 0
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?		Start Date on Ticket
<input checked="" type="checkbox"/> Yes Locate Ticket Number		11/26/2013
<input type="checkbox"/> No		
<input type="checkbox"/> Unknown		
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 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
<p>On or about 1100 hours on 18 February 2014, Clay Pagdett an equipment operator with Plote Construction started to excavate in the area of our natural gas distribution system. This was the same operator with the same company who had damaged the same line a couple weeks earlier. I was notified by phone at 1532 hours on 18 February by the developer, that the contractor had again damaged our distribution main. A gas crew was immediately dispatched to the scene to repair the damage. The following is a statement of what he saw when he arrived on scene "I arrived on location and seen that the operator was working less than 50' from blowing gas. I ask the operator to dig a bell hole for us to squeeze off the 2" line. After squeezing the line I seen that the line had been hit not once but four times and the operator kept on working in the blowing gas. I than called my supervisor . When he arrived he took pictures. I made my repairs and left."</p>

Description of Event Continued

When I arrived on scene, I looked at the multiple damages and photographed the damages for our records. The following is an explanation of the type and location of the damages: The first damage was to a repair coupling located on the East side of the excavation, the coupling was damaged, but no gas loss took place. The second damage was to a second repair coupling 3 feet to the east. The coupling was severely damaged, but no gas loss took place. The third damage was to the gas main 10 feet to the east of the second. This damage caused a gas release through an approximate 2" diameter hole. The fourth damage was two feet from the third, with gas loss from a 2" diameter hole. The fifth damage was to the gas main about 15 feet from the fourth damage. This damage caused a gas release through a 1/2" x 3' crack in the plastic main. The operator continued to dig in the vicinity of the gas release, the entire time, even during the repair of the gas main. When MDU's gas crew foreman talked with the equipment operator, the operator had a very nonchalant attitude about the damage, and gave off a do not care attitude. It was very apparent, that they did not follow the 2' had dig zone during this project. That afternoon I left a message with the Project manager for Plote Construction, Maurice Schurger. I also left a message with Larry Plote, the ND Division Manager. I was able to speak with Maurice on 19 February 2014 at 0940 hours. During the conversation he would not admit any fault, and appeared to attempt to push the blame back on the utility. I have not yet received a return call from Larry Plote.

PART 1 - SIGNATURE

Signature of Person Filing Complaint <i>Paul W. King</i>	Date 4/16/14
---	-----------------

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

Damage 1



Damage 2



Damage 3

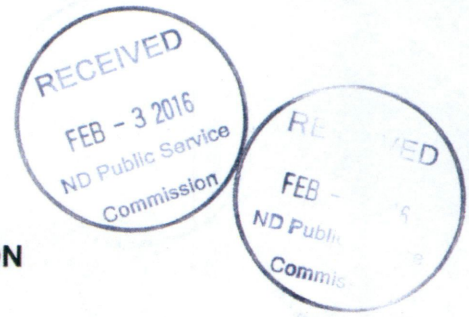




Damage # 5



STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



Public Service Commission
Plote Construction ND, LLC
Damage Prevention Enforcement

Case No. GS-14-216

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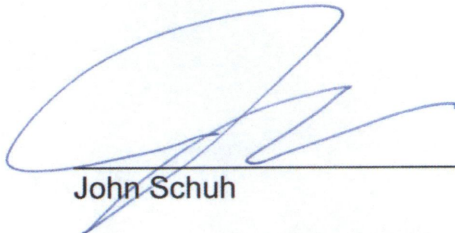
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Dated this 3rd day of February, 2016



John Schuh

Public Service Commission Advocacy Counsel
State Capitol – 12th Floor
600 E Boulevard Ave – Dept. 408
Bismarck, North Dakota 58505-0480
701-328-2412

Victor Schock
Public Utility Analyst
Public Service Commission Advocacy Staff
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