

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Plote Construction ND, LLC
Damage Prevention Enforcement**

Case No. GS-14-216

ORDER ON CONSENT AGREEMENT

January 4, 2017

Preliminary Statement

On December 16, 2016, the Public Service Commission Advocacy Staff filed a Consent Agreement with Plote Construction ND, LLC.

Discussion

On April 14, 2014, the Commission received a ND One-Call Complaint from Paul Riely, District Gas Superintendent for Montana-Dakota Utilities Co., a Division of MDU Resources Group (Montana-Dakota) alleging a violation by Plote Construction ND, LLC (Plote) of North Dakota Century Code section 49-23-05(5) by causing damage to a two-inch medium pressure natural gas main distribution line with a back-hoe. Plote is a registered North Dakota company with offices located at 1100 Brant Dr, Hoffman Estates, IL 60192-1676.

North Dakota Century Code section 49-23-05(5) provides that an excavator "conduct the excavation in a careful and prudent manner". As a result of its investigation, Public Service Commission Advocacy Staff (Advocacy 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 on February 3, 2014. The NDOC assigned locate ticket number 14006256 to the excavation notice. Under North Dakota Century Code section 49-23-04(3)(g), the expiration date for the locate ticket was February 24, 2014. On February 18, 2014, Plote personnel began an excavation to dig footings for a maintenance building. Plote notified Montana-Dakota of the damage on February, 18, 2014. No customers lost service as the area was a new residential development under construction. Montana-Dakota was reimbursed for the cost of the damages from the excavation.

On February 3, 2016, Advocacy Staff filed a formal complaint with the Commission.

On March 21, 2016, Plote filed a response contesting the allegations. Plote and Advocacy Staff engaged in good faith settlement discussions resulting in a Consent Agreement.

Under the Consent Agreement, Plote agrees to be assessed a civil penalty of \$2,000. Plote agrees to remit \$2,000, payable to the North Dakota Public Service Commission, within ten business days of service of this Order.

Having considered this matter, the Commission finds the Consent Agreement filed on December 16, 2016 is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Consent Agreement filed by Plote and Advocacy Staff on December 16, 2016 is approved. A copy of the Consent Agreement is attached to and made a part of this Order.
2. Plote will remit a penalty of \$2,000, payable to the North Dakota Public Service Commission within ten business days of service of this Order.

PUBLIC SERVICE COMMISSION



Brian P. Kalk
Commissioner



Randy Christmann
Chairman



Julie Fedorchak
Commissioner

December 16, 2016

Via Hand Delivery

Mr. Darrell Nitschke
Executive Secretary
ND Public Service Commission
600 E. Boulevard Ave. Dept. 408
Bismarck, ND 58505-0480

Re: Case No. PU-14-216
Public Service Commission
Plote Construction ND, LLC
Damage Prevention Enforcement

Dear Mr. Nitschke:

Enclosed for filing in the above entitled matter, please find the signed consent agreement.

Best Regards,



John Schuh
PSC Legal Department

Enclosure

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	Case No. PU-14-216
)	
vs.)	CONSENT AGREEMENT
)	
Plote Construction ND, LLC.,)	
)	
Respondent .)	

Preliminary Statement

On April 14, 2014, the Commission received a ND One-Call Complaint from Montana-Dakota Utilities Company (MDU). The complaint alleged a violation by Plote Construction ND, LLC ("Plote") of North Dakota Century Code section 49-23-05(5) by failing to excavate in a careful and prudent manner.

North Dakota Century Code section 49-23-05(5) provides that an "excavator shall conduct the excavation in a careful and prudent manner." As a result of its investigation, Public Service Commission Advocacy Staff ("Advocacy Staff") believed Plote violated North Dakota Century Code section 49-23-05(5) and Advocacy Staff initiated an administrative action against Plote.

Plote and Advocacy Staff engaged in good faith settlement discussions resulting in this Consent Agreement. Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and that entry of this Consent Agreement is the most appropriate means of resolving this administrative action, Advocacy Staff and Plote make the following agreement, subject to the approval and acceptance of the

Commission:

- 1. On February 23, 2016, Advocacy Staff filed a formal complaint with the Commission.**
- 2. On March 21, 2016, Plote filed a response contesting the allegations.**
- 3. Plote and Advocacy Staff engaged in good faith settlement discussions.**
- 4. This Agreement is intended to resolve the violation alleged in the complaint.**

Advocacy Staff and Plote agree to settle this matter on the following terms:

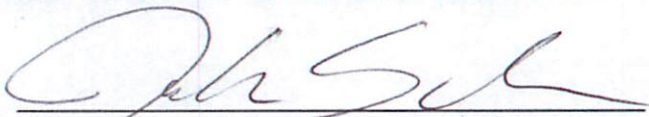
- a. The Formal Complaint alleges Plote violated North Dakota Century Code section 49-23-05(5).**
- b. Pursuant to good faith settlement discussions, Plote agrees to be assessed a civil penalty of \$2,000, payable to the North Dakota Public Service Commission within ten business days of service of an order accepting or adopting the Consent Agreement.**
- c. If approved by the Commission, Plote expressly waives any further procedural requirements with respect to the issuance of the Consent Agreement and Order. Plote waives its right to contest this matter or the validity of this Consent Agreement and Order, including all rights to administrative or judicial hearings or appeals.**
- d. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Agreement and Order.**
- e. It is understood and agreed that this settlement of the contested violation is a compromise of a disputed claim and payment of the \$2,000.00 civil**

penalty to the North Dakota Public Service Commission should not be construed as an admission of liability on the part of Plote, by whom liability is expressly denied.

5. This agreement may be executed in counterparts and duplicate copies, each which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.
6. The undersigned is authorized to act on behalf of Plote and bind Plote for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 15th day of December, 2016

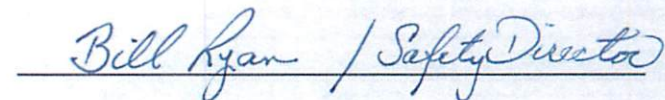
PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By: 

John M. Schuh
Advocacy Counsel
12th Floor, Dept. 408
600 Boulevard Ave.
Bismarck, ND 58505-0480

Dated this 1st day of December, 2016

Plote Construction

By:  / Safety Director

{insert name and title}

