

14-216

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**RECEIVED**  
JAN 18 2017  
NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

**PUBLIC SERVICE COMMISSION**

600 E BOULEVARD AVE DEPT 408  
BISMARCK, ND 58505-0480

**OFFICIAL MAIL**

Paul Riely  
District Gas Superintendent  
Montana-Dakota Utilities Company  
PO Box 1407  
Williston, ND 58802-1407

*Handwritten:* # 1407, School, # 15, # 1, Williston, ND, 58802-1407

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RETURN TO SENDER  
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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 REGULAR 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 **19th day of January 2017**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by first class mail, fully prepaid a copy of:

- **Order on Consent Agreement**
- **Affidavit of Service by Certified and Regular Mail (Dated January 5<sup>th</sup>, 2017)**

The envelope was addressed as follows:

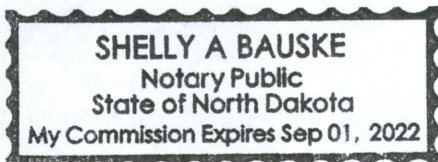
Paul Riely – District Gas Superintendent  
Montana-Dakota Utilities Co.  
121 8<sup>th</sup> Ave. West  
Williston, ND 58801

Each post office address shown is the respective addressee's last reasonably ascertainable post office.



Subscribed and sworn to before me  
this **19th day of January, 2017**.

  
Notary Public



SEAL

**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

33 GS-14-216 Filed: 12/16/2016 Pages: 4  
Consent Agreement

**BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA**

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

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**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:

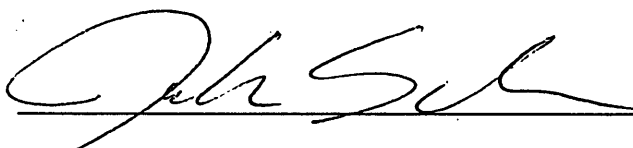
- a. The Formal Complaint alleges Plote violated North Dakota Century Code section 49-23-05(5).
- b. Pursuant to good faith settlement discussions, Plote agrees to be assessed a civil penalty of \$2,000, payable to the North Dakota Public Service Commission within ten business days of service of an order 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 15<sup>th</sup> day of December, 2016

PUBLIC SERVICE COMMISSION  
ADVOCACY STAFF – DAMAGE PREVENTION

By: 

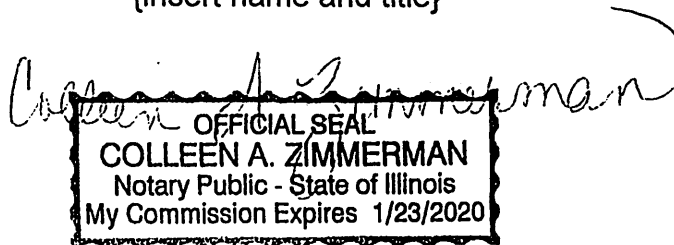
John M. Schuh  
Advocacy Counsel  
12<sup>th</sup> Floor, Dept. 408  
600 Boulevard Ave.  
Bismarck, ND 58505-0480

Dated this 1<sup>st</sup> day of December, 2016

Plote Construction

By: Bill Ryan / Safety Director

{insert name and title}



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 AND REGULAR 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 **5th day of January, 2017**, 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:

- **Order on Consent Agreement**

The envelope was addressed as follows:

Maurice Schurger  
Plote Construction ND, LLC  
908 Elk Street  
Alexander, ND 58831  
Cert. No. 7015 0640 0006 6993 6477

**Geralyn R. Schmaltz** further deposes and says that on the **5th day of January, 2017** she deposited in the United States Mail, Bismarck, North Dakota **one** envelope by regular mail, with postage fully prepaid, securely sealed, containing a copy of the same.

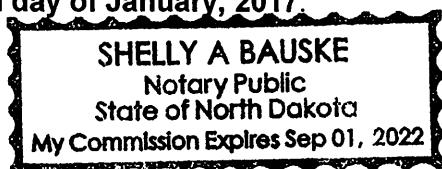
The envelope was addressed as follows:

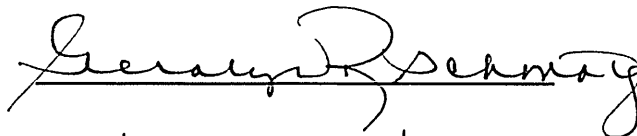

Paul Riely  
District Gas Superintendent  
Montana-Dakota Utilities Company  
PO Box 1407  
Williston, ND 58802-1407

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

Subscribed and sworn to before me  
this **5th day of January, 2017**.

SEAL



  
\_\_\_\_\_  
  
\_\_\_\_\_  
Notary Public