



Public Service Commission State of North Dakota

COMMISSIONERS

Brian P. Kalk
Randy Christmann
Julie Fedorchak

Executive Secretary
Darrell Nitschke

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Bismarck, North Dakota 58505-0480
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TDD: 800-366-6888 or 711

July 25, 2014

Gary Molstad
Molstad Excavating, Inc.
1575 N 73rd St, PO Box 13601
Grand Forks, ND 58208-3601

Dear Mr. Molstad:

Enclosed is a copy of a Third Party Damage Complaint (Complaint) against Molstad Excavating, Inc., received by the North Dakota Public Service Commission (Commission) on June 30, 2014, from Dan Schaefer, Line Superintendent at Nodak Electric. The location of damage identified in the complaint is the intersection of 48th Avenue South and South 11th Street, Grand Forks, ND.

Please respond to Darrell Nitschke, Executive Secretary, North Dakota Public Service Commission, by **August 11, 2014**, with your written account of the event, including the applicable One Call locate ticket number(s) for work performed at the address indicated. 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 Molstad Excavating, Inc.;
- c) Molstad Excavating, Inc.'s history of prior violations or complaints;
- d) Molstad Excavating, Inc.'s ability to pay;
- e) Any good faith effort by Molstad Excavating Co., Inc., in attempting to achieve compliance; and
- f) The effect the penalty may have on Molstad Excavating Co., Inc.'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 each violation of the One Call law.

Please contact me at 701-328-4188 or at jprescott@nd.gov with any questions regarding this correspondence.

Sincerely,

Julie Prescott
Public Utilities Division

Enc: Third Party Damage Complaint
c: Dan Schaefer, Nodak Electric

3

PU-14-499 Filed: 7/25/2014 Pages: 9
Letter enclosing North Dakota one call complaint

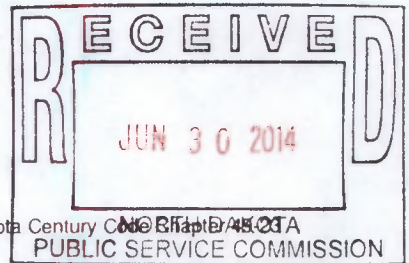


ND ONE-CALL COMPLAINT

Public Service Commission

SFN 59067 (1-14)

To allege a violation of the One-Call Excavation Notice System Law: North Dakota Century Code Chapter 49-23A



PART A – WHO IS SUBMITTING THIS COMPLAINT (COMPLAINANT)

Company/Person Nodak Electric/ Dan Schaefer	Street Address 4000 32nd Avenue South	City Grand Forks	State and Zip Code North Dakota 58208
Telephone and Cell Phone Number 701-746-4461 Cell/ 701/739/3575	Email Address dschaefer@nodakelectric.com		Date 6/30/14
☒ Complainant is willing and able to testify on the complaint if matter goes to formal hearing			

PART B – WHO VIOLATED THE ONE-CALL REGULATIONS (RESPONDENT)

Company/Person Molstad Excavating	Street Address PO Box 13601	City Grand Forks	State and Zip Code North Dakota 58208-3601
Telephone and Cell Phone Number 701-746-5474	Email Address shareeharr@gmail.com		

PART C – ALLEGED VIOLATION

☐ Operator failed to provide or update the information provided to the notification center on a timely basis ☐ Excavator failed to provide excavation or location notice at least 48 hours before beginning any excavation ☐ Excavator failed to provide required information in excavation or location notice ☐ Notification center failed to transmit the notice to every operator that has an underground facility in the area of the excavation ☐ Notification center failed to inform the excavator of the names of operators of underground facilities in the area ☐ Operator failed to locate and mark underground facility within 48 hours ☒ Excavation started prior to underground facility locate ☐ Operator failed to mark underground facility within 24 inches horizontally ☐ Excavator failed to renew excavation or location request prior to the expiration of the twenty-one-day period ☒ Excavator failed to conduct the excavation in a careful and prudent manner to avoid damage of underground facilities ☒ Excavator failed to maintain the markings during excavation ☐ Other (identify the specific section of NDCC Chapter 49-23) _____
Location of Violation: City of Grand Forks 48th Avenue South intersecting with South 11th Street
Date and Time of Violation: 6/10/14 @ 9:28 AM
Description (summarize the observations on which you rely to allege the violation) <i>If more space is required, please provide the description on a separate page.</i> Molstad Excavating hit our 3 phase primary URD cable on the South end of Grand Forks. Molstad's sent in one call tickets #14066983 and #14066948 for excavation at the above location. Our cable locator Chuck Traiser located the area on 6/2/14. Molstad's sent in a respot on tickets #14074405 and #14074406 on 6/9/14 @ 2:52 PM due to the fact 80 feet of flags were missing. On 6/10/14 @ 9:28 AM our cable was hit by Molstad's. We sent a bill to the contractor because they did not maintain their flags on the original locate and they excavated before their work to begin time started on the respot locate. The contractor refuses to pay for our damaged facilities due to the fact they did not need to wait for the respot ticket work to begin date and time because their original 21 day ticket was still in effect and we did not put any flags down. (Continued on e-mail form)

PART D – DAMAGE

Fatalities	Injuries Close call backhoe operator almost hitting our locator	In-patient Hospitalization
Underground facility type(s) and Operator(s) affected: Three phase 4/0 primary underground cable, Nodak Electric		
Estimated Value of Damage (damage as defined under NDCC Chapter 49-23): \$ \$2649.30		Number of Customers Affected 1000
Other impact of event: Many irate customers with no electricity to operate their businesses		
Please attach photos of Event Area or Damaged Facility		

PART I – SIGNATURE

Signature of Person Filing Complaint Dan Schaefer	Date 6/30/14
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Send Completed, Original Complaint To:
Public Service Commission
600 E Boulevard Ave Dept 408
Bismarck ND 58505-0480
Telephone: (701) 328-2400

-Info-Public Service Commission

From: Dan Schaefer <dschaefer@nodakelectric.com>
Sent: Monday, June 30, 2014 5:31 PM
To: -Info-Public Service Commission
Subject: Damage report
Attachments: ND-one-call-complaint-form-fillable (3).pdf; 20140630172856782.pdf

(Continued from original form)

I told Sharee Haar from Molstads that we did in fact locate our facilities and she replied back "prove it".

I called Ryan Schmaltz from North Dakota One Call and he tried to explain to Sharee the contractor's responsibilities in regards to tickets. When Ryan replied back to me he stated that he got nowhere with Sharee.

Attached are the following documents associated with this incident:

1. Explanation of events that took place after the cable was cut and our employee almost hit with backhoe. (one page)
2. Bill and explanation of bill that was sent to Molstad Excavating. (three pages)
3. Letter from Molstads as to why they are not going to pay the bill for damages. (one page)
4. Letter from our locating department addressing the accusations of Molstads. (two pages)
5. Picture where it shows that Nodak Electric located it's underground cable. The picture shows 2 red flags in the green grass and no flags where the sod and dirt was removed. (one page)

I have tried every avenue before involving the PSC, unfortunately this is my only option at this point. It is very frustrating when our facilities are damaged due to a contractors neglect and they refuse to own up to their responsibilities. Our engineering department spends a lot of time with the general contractors (Community Contractors in this instance) on these projects so prints with the utilities on them can be created. This lets the contractors know there is something in the area if the flags are destroyed. We locate the line per the locate request sent to us and still a main feeder that provides service to our customers gets hit. I am also disappointed in the actions of Molstads track hoe operator. We could have had an injured employee from his neglect.

Sincerely,
Dan Schaefer
Nodak Electric.

Stem 1

Charles M. Traiser

From: Charles M. Traiser
Sent: Tuesday, June 10, 2014 1:12 PM
To: Gordy Mohn
Subject: Molstad Dig in

I located 2 tickets for Molstads on 6/2/14. This was at the 47th Ave S and S 11th St area. I had located this same area for Florians previously. On 6/9/14 at 3pm we received respot tickets for Molstads at this same area.

On 6/10/14 around 10am Cole and Derrick both contacted me to see if I had located this area for anyone. We had lost the circuit that feeds this area back at the Substation. Derrick later found where Molstads had hit our 3 ph 4/0 west of 165-276-382A. I drove over there to check out the situation with our flags. There were flags off to the east and west of where the dig in occurred. The immediate area was disturbed (Molstads had a caterpillar pushing dirt around the area where the flags were missing). There was 3 lengths of 4/0 cable laying beside the hole they were digging. I asked who was in charge and was told, "the track hoe operator". I told him that they would most likely be billed for this. He became quite upset and said "how's that". I said "I had located the line for them on 6/2/14". He said "how am I suppose to know that, I just got here." I said "his employer would be billed". He said "I don't have time for this" and swung the backhoe around very rapidly, I had to jump out of the way of the cab and it brushed up against my back. This came very close to knocking me over and could have cause an injury/accident. Right after this occurred Cole arrived and we talked about the situation, then I left.

In checking with dispatch, Molstads did not call the dig-in in.

Also Cole had talked to Community Contractors after I had left and they said the area had been marked a number of times.

*Chuck Traiser
Cable Locator
Nodak Electric*



PO Box 13000
Grand Forks, ND 58208-3000
(701)746-4461

Item 2
1 of 3
INVOICE: 31889

Invoice Date: 06/20/2014
Terms: NET 15 DAYS
Due Date: 07/05/2014
Amount Due: \$ 2,649.30

MOLSTAD EXCAVATING
PO BOX 13601
GRAND FORKS ND 58201-3833

Account: 544
Description: Primary cable dig in at Valley Market Development. 6/10/14 @ 9:28 am
Instructions:

Page 1 of 2

DESCRIPTION	QUANTITY	UOM	UNIT PRICE	AMOUNT	TAX
5 men - 19 hours regular time	19.000	EA	61.5000	1,168.50	
2 men - 2 hrs dispatch/engineering time	2.000	EA	61.5000	123.00	
3 men - 1.5 hours OT	1.500	EA	80.2500	120.38	
Mileage - Unit # 362	40.000	EA	2.2000	88.00	
Mileage - Unit # 389	10.000	EA	0.6300	6.30	
Mileage - Unit # 335	40.000	EA	0.6300	25.20	
U-Splice 4/0 220-260 COOPER # SP15C007 REPLACES 6071 24 08	6.000	EA	42.1400	252.84	
U-Shrinktube Heat Spl 1/0-4/0	6.000	EA	14.8000	88.80	
WUP-4/0 220 EPR	40.000	FT	3.1800	127.20	
3 - 125 Amp Fuses	3.000	EA	169.3000	507.90	
10% Svc Chg based on labor/material	1.000	EA	141.1800	141.18	

RETURN BOTTOM PORTION WITH PAYMENT



PO Box 13000
Grand Forks, ND 58208-3000
(701)746-4461

Account: 544
Invoice: 31889
Due Date: 07/05/2014
Amount Due: \$ 2,649.30

Amount Of Payment: _____

Remit To:

MOLSTAD EXCAVATING
PO BOX 13601
GRAND FORKS ND 58201-3833

Nodak Electric Cooperative
PO BOX 13000
GRAND FORKS ND 58208



PO Box 13000
Grand Forks, ND 58208-3000
(701)746-4461

Item 2
INVOICE: 31889 *2 of 3*

Invoice Date: 06/20/2014
Terms: NET 15 DAYS
Due Date: 07/05/2014
Amount Due: \$ 2,649.30

MOLSTAD EXCAVATING
PO BOX 13601
GRAND FORKS ND 58201-3833

Account: 544

Description: Primary cable dig in at Valley Market Development. 6/10/14 @ 9:28 am

Page 2 of 2

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MESSAGES

1% INTEREST CHARGE APPLIED TO BALANCES OVER 30 DAYS.
ONLINE PAYMENTS ARE NOT ACCEPTED FOR NON-ELECTRIC SERVICES.

Subtotal:	\$ 2,649.30
Tax:	\$ 0.00
Total:	\$ 2,649.30
Amount Paid:	\$ 0.00
Amount Due:	\$ 2,649.30

Attached to this report is a bill for the damage done to our facilities on 6/10/14 @ 9:28 AM. In which caused an outage to around 1000 of our customers.

The reasons for billing Molstad Excavating are as follows:

Nodak Electric located their three phase electric line on 6/2/14 per request of ticket #14066983 and #14066948 these locates are valid for 21 days from 6/4/14 @ 9:00 AM. It is the responsibility of the party who calls in the locate request to maintain the flags for the 21 days.

There was a request for a respot on 6/9/14 at 2:52 PM. The work to begin date on tickets #14074405 and #14074406 was 6/11/14 at 3:00 PM. I called Sharee Harr and Mike Gefroh and received conflicting stories about the respot. Sharee stated to me that the reason for the respot was due to 80 feet of flags missing and the line needed to be crossed. Mike tells me the reason for the respot was for an area around a manhole and he had no idea there was a line there and it did not show anything on the print he received from Community Contractors. If Sharee is correct Molstad Excavating dug before the work to begin date. If the respot was for work around a manhole, why does it say on the respot ticket mark South 500 feet and East 800 feet along with 500 feet east of new 48th Ave. S?

Molstad Excavating had a caterpillar pushing dirt around the area the flags were missing. We would be more than happy to have Molstads call us up and we could replace the flags that are wiped out by construction. This helps Molstads get their work done and prevents an outage for Nodak Electric.

I am also including the locate tickets from North Dakota one call along with an e-mail I received from our cable locator Chuck Traiser. It is disturbing to me how your backhoe operator acted towards Chuck. I know that in situations like this emotions are high however it looks like Chuck could very well have been injured due to his actions.

Dan Schaefer

Line Superintendent

Nodak Electric

Phone # 701-739-3575

Item 3

Molstad Excavating, Inc.

PO Box 13601
GRAND FORKS, NORTH DAKOTA 58208-3601

TELEPHONE:
OFFICE: (701) 746-5474

MEMBER OF



JUN 30 2014

June 26, 2014

Nodak Electric
PO Box 13000
Grand Forks, ND 58208-3000

RE: Invoice 31889

Dear Sirs:

I have received invoice 31889 for a cut primary cable at the Hugo's Valley Market Development. I am sending you a copy of both my locate tickets for that area ; as well as, pictures from the jobsite the day the cable was hit. As you can see there are no Green Nodak Flags anywhere on the jobsite. Molstad Excavating has no intention of paying your invoice.

We have had multiple issues with Nodak locates this year, on June 17th, Dick Jensen had to call for Shady Ridge locates that should have been marked and plans were emailed to your locator directly. (Ticket – 14071666)

On June 25th, David Molstad had to call for additional locates on 55th and Cottonwood jobsite because the ones marked didn't include the service for the home he was digging next to. (Ticket – 14076426).

On June 25th, Brian Larson had to call for locates because nothing had been marked on his clear ticket. (Ticket – 14087563)

I spoke with two inspectors from the City Engineering Dept. this morning and they indicated there are other contractors having the same issues and having to call your locators multiple times to get accurate marks.

Sincerely,

Sharee Haar, P.E.
Project Engineer

Item 4

Dan Schaefer

From: gordy mohn
Sent: Monday, June 30, 2014 3:36 PM
To: Dan Schaefer
Cc: Chuck Traiser
Subject: Molstad

Dan,

In response to the letter from Molstad Excavating, Sharee states ticket number 1407166 dated 6/5/14. I am not sure what the issues have been. As the ticket stated entire road right of way. I had called Dick Jenson that day to find out which side of the road they would be digging, he stated that they would be on the inside right of way, he also said they could send over the prints for us where they would be going. Sharee did send the prints over on the 6th and the area was located on that day. Dick Jenson did call on the 17th of June with a question where they were digging east of account 165-266-056. We checked the dig location out and determined it was old cable at that location. We did not hear anything more until a respot ticket was sent on the 18th of June, ticket number 14083874, we also refreshed the existing markings at that time along with the crossing on Adams drive.

On June 25th I am not aware of anyone talking with David Molstad in regards to ticket number 14076426, 6/11/14. Chuck did talk with Sharee on the 12th based on the ticket information, which did not have any address on, Sharee told Chuck "we do not have to mark the yards of the existing houses. We did receive a copy of their print that Chuck discussed with Sharee and compared it to our Map, Chuck did locate lines in 165-274 -305 & 306.

On June 25th Chuck did receive a call from Brian Larson in regard to ticket number 14087563, 6/23/14. Brian was wondering why we had not marked this area. This was a respot ticket for ticket number 14067024 dated 6/02/14. The original ticket # 14067024, Chuck called Sharee on the 2nd of June about this location as it was indicating 47th Ave. N. which was the wrong address, Chuck told her if in fact it was 47th St. N, that would be in Excel's area and we would be clear. The respot ticket number 14087563 still had the same information as the original and was cleared on the 23rd as well. When Brian called Chuck on the 25th, after researching the information, he told Brian that it was in Excel's area.

I did not know as Sharee states that we are using Green locate flags in the Valley Market Development?

Also in reading the North Dakota One Call Handbook I believe, Section 49-23-04. 3. F. (1),(2), (3), (4), & (5), in regard to excavations defines their responsibilities to maintain and notify operators if they think something is not right. We have always been more than willing to work with Contractors and go back and re-mark something if they call.

Gordy