

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Rock Solid Excavating, Inc.
Damage Prevention Enforcement

Case No. GS-14-633

AFFIDAVIT OF SERVICE 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 **23rd day of March, 2016**, 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:

- **Complaint**
- **Motion Finding Complaint States a *Prima Facie* Case**

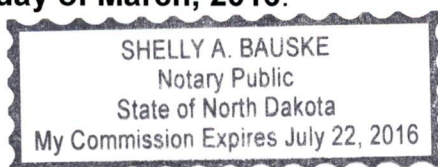
The envelope was addressed as follows:

J & J Homes, LLC
Registered Agent for Rock Solid Excavating, Inc.
3820 6th Ave. W
Williston, ND 58801-3547
Cert. No. 7015 3010 0000 6559 9746

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

Subscribed and sworn to before me
this **23rd day of March, 2016**.

SEAL



A handwritten signature in blue ink, appearing to read "Geralyn R. Schmaltz", written over a horizontal line.

A handwritten signature in blue ink, appearing to read "Shelly A. Bauske", written over a horizontal line.
Notary Public

unless otherwise agreed to between the excavator and operator. If an operator determines more time is necessary for location, the operator may request a twenty-four-hour extension of the excavation or location notice by notifying the notification center. The notification center shall notify the excavator of the extension. An excavation begins the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice.

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.

North Dakota Century Code section 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 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.

North Dakota Administrative Code section 69-02-04-05 provides:

In any proceeding in which the commission is authorized to act after opportunity for hearing, opportunity is afforded by service of notice fixing a reasonable period of time within which any person desiring to be heard may file a protest or request for a hearing. If a protest or request for hearing is not filed within the time provided, the commission may dispose of the matter on the basis of the pleadings, other submittals, and the studies and recommendations of the staff. A party not requesting oral

hearing in the party's pleading is deemed to have waived a hearing for the purpose of the decision, but not for the purpose of applying for rehearing with respect to the decision. If a person requests a hearing but does not show good cause, the commission may determine the matter without a hearing.

IV

On July 22, 2014, the Commission received a ND One-Call Complaint from Kent Kahl, Pipeline Engineer for WBI. The complaint alleges a violation by Rock Solid of North Dakota Century Code section 49-23-04(1) of the One-Call Excavation Notice System.

V

As alleged by WBI's complaint, on July 16, 2014, Rock Solid began an excavation as defined in North Dakota Century Code section 49-23-01(7) while performing a water line install at White Tail Circle in Williston, North Dakota. As a result of this excavation, damage was caused by a back hoe to WBI's 12-inch natural gas transmission line. WBI alleges that the cost to repair its facilities was approximately \$5,500.

VI

By its July 30, 2014 letter, attached as Exhibit 1, staff informed Rock Solid of WBI's complaint and requested a response by August 27, 2014. Rock Solid's August 26, 2014 response, attached as Exhibit 2, asserted that Rock Solid takes full responsibility for the incident. Rock Solid further notes that they intend to learn from this incident and make sure it does not happen again.

VII

Based on its investigation, Staff determined that Rock Solid did not provide an excavation notice to the North Dakota One Call (NDOC) Notification Center prior to the

damage in relation to the subject excavation. On July 16, 2014, Rock Solid's personnel began an excavation to perform a water line install. Rock Solid notified WBI of the damage on July 16, 2014. No customers were affected because WBI installed a composite repair sleeve to avoid shutting down the line. WBI has been reimbursed for cost of the damages from the excavation.

Based on its investigation, Staff concluded that there was no agreement between Rock Solid and WBI under North Dakota Century Code section 49-23-04(1) prior to excavation that would relieve Rock Solid of its obligation to provide excavation notice at least forty-eight hours before the excavation.

Based on its investigation, Staff concluded that the excavation was not being made in a time of emergency under North Dakota Century Code section 49-23-04(4), allowing the excavator to give notification after the start of the excavation.

VIII

Rock Solid violated North Dakota Century Code section 49-23-04(1) by failing to provide an excavation notice to the NDOC Notification Center at least forty-eight hours before beginning its excavation.

IX

North Dakota Century Code section 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.

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.

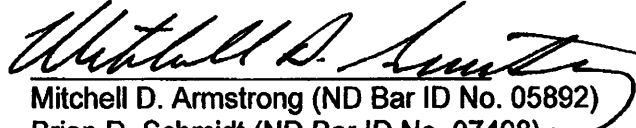
Prayer for Relief

Based on the foregoing, Staff seeks the following relief:

1. That the Commission find Rock Solid 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 49-23-04(1).

2. That the Commission impose an appropriate civil penalty up to \$25,000, but at least \$3,500.
3. Such other relief that the Commission finds just and proper.

Dated this 13th day of January, 2016



Mitchell D. Armstrong (ND Bar ID No. 05892)
Brian D. Schmidt (ND Bar ID No. 07498)
Special Assistant Attorneys General
122 East Broadway Avenue
P.O. Box 460
Bismarck, ND 58502-0460
(701) 258-0630
Attorneys for Advocacy Staff

and

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

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Randy Christmann
Julie Fedorohak

Executive Secretary
Darrell Nitschke

600 East Boulevard, Dept. 408
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Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

JULY 30, 2014

ROCK SOLID EXCAVATING, INC.
P.O. BOX 235
PARK CITY, MT 59063-0235

CASE GS-14-633

Re: ND ONE-CALL COMPLAINT

Dear Mr. Todd:

Enclosed is a copy of a ND ONE-CALL COMPLAINT against ROCK SOLID EXCAVATING, INC. (ROCK SOLID) received by the North Dakota Public Service Commission (Commission) on July 22, 2014, from WBI Energy (WBI). The location of the ND ONE-CALL violation was White Tail Circle in Williston, ND.

Please respond to the Third Party Complaint by **August 27, 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 ROCK SOLID;
- c) ROCK SOLID's history of prior violations or complaints;
- d) ROCK SOLID's ability to pay;
- e) Any good faith effort by ROCK SOLID in attempting to achieve compliance; and
- f) The effect the penalty may have on ROCK SOLID's ability to continue in business.

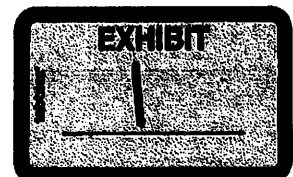
North Dakota Century Code section 49-07-01.1 provides for a civil penalty not to exceed twenty five thousand dollars for violations of the One Call law.

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. Kent Kahl, WBI





ND ONE-CALL COMPLAINT

Public Service Commission

SDN 50087 (1-14)

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

PART A - WHO IS SUBMITTING THIS COMPLAINT (COMPLAINANT)

Company/Person WBI Energy Trans	Street Address 1250 West Century Avenue	City Bismarck	State and Zip Code ND 58504
Telephone and Cell Phone Number 701.328.2214	Email Address Kent.Kahl@wbienergy.com		Date 7/22/14

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 Rockwell Engineering Inc (Mark) Kohl	Street Address PO Box 235	City Park City	State and Zip Code MT 59003
Telephone and Cell Phone Number 406.491.6266	Email Address rockwellengr@comcast.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 receive 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 (Specify the specific section of NDCC Chapter 49-23)

Location of Violation:

State: ND

Date and Time of Violation:

7/22/14

Description (Summarize the observations on which you rely to allege the violation). If more space is required, please provide the description on a separate page.

On July 22, 2014, Rockwell Engineering Inc. proceeded to excavate without a locate request to install a water service line in a new house being constructed off of White Tail Creek in Bismarck, ND. The excavator did not receive the locate request until 4:30 pm CST. The excavator did not provide the necessary information to the notification center. The damage consisted of damaged pipelines with several gouges. WBI located the company repair crews in order to avoid shutting down the pipeline for a significant period of time.

PART D - DAMAGE

Facilities NA	Injuries NA	Impatient Disruption NA
Underground facility type(s) and Operator(s) affected: None listed		
Estimated Value of Damage (damage as defined under NDCC Chapter 49-23): \$ \$500.00	Number of Customers Affected 0	
Other types of event: Several WBI personnel were involved with assessing the damage, determining the appropriate repair method, and installing the composite repair sleeves.		

Please attach photos of Event Area or Damaged Facility

PART E - SIGNATURE

Signature of Person Filing Complaint Kent Kahl	Date 7/22/14
---	-----------------

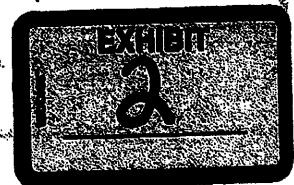
Send Completed, Original Complaint To:
Public Service Commission
600 E. Boulevard Ave Dept 408
Bismarck ND 58505-0408
Telephone: (701) 328-2409

WBI Energy Transmission, Inc.
Kent Kahl

Rock Solid Excavating Inc
Case GS-14-633

On July 16-2014 Andrew Placher (operator for us @ Rock Solid) got a call from Carpenter Homes that she needed a water line installed on White Tail Circle Subdivision IN Williston. He happened to have time that day and started digging the line IN, and for some reason forgot, didn't think, the bottom line is there was no excuse for what happened. Andrew has dug around the pipe line many times, with Locates and with WBI Energy Present. We take pride on what we do and how we do it, this was a mistake that Andrew knows how huge it really was. We do believe and that day the crew for WBI said, he's lucky to even be here, ~~so we have~~ Rock Solid take 100% responsibility of what happened, were lucky and we know it. It also puts a bad mark on our Record, that we have to learn from and make sure it doesn't happen again. IF you have any question at all call me Mark Todd @ 406 861 2808

Thankyou
Mark Todd



Rock Solid Excavating Inc
a. Case GS-14-633

@A- Rock Solid operator dug water line in with out locating he over looked, forgot, ~~but~~ but the Bottomline it didn't happen. As to severity, It could have been a life taking mistake! and we know that,

B: We take complete fault, we always obey and take pride. That day will not happen again,

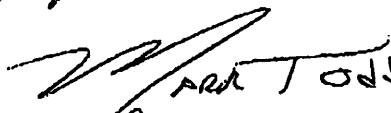
C. We have never had any violation, we are a small company that take pride on how and what we do. We have worked with all the utility around Williston, MDU, Rural water, they call us to do excavation for them, because of how we operate and take pride on our jobs.

d. The ability to pay yes we can pay, and will if that is ^{what} ~~the~~ the Commission determines the out come, Having a violation hurts worse to us, but the we realize it could have been a lot worse out come that day than it was

@E. We have tried to help anyway that we can to fix the problem that day. Beer in contact with Aaron, and also Shawn Ross @ WBT Energy To make sure it got fix, and Back filled in a timely matter

f. The effect could have been alot worse than what it could have been. The Penalty Effect will Not have any effect on keeping in Business, It will hurt our pride, but all we can do ~~is~~ is learn, and make Sure that this Never happens again.

Feel free to call me at anytime if you have any questions.


MARK TODD
Rock Solid Excavating
406-861-2808.



Public Service Commission
State of North Dakota

COMMISSIONERS

Brian P. Kalk
Randy Christmann
Julie Fedorohak

Executive Secretary
Darrell Nitschke

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
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E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-345-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

JULY 30, 2014

ROCK SOLID EXCAVATING, INC.
P.O. BOX 235
PARK CITY, MT 59063-0235

CASE GS-14-633

Re: ND ONE-CALL COMPLAINT

Dear Mr. Todd:

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Please respond to the Third Party Complaint by August 27, 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 ROCK SOLID;
- c) ROCK SOLID's history of prior violations or complaints;
- d) ROCK SOLID's ability to pay;
- e) Any good faith effort by ROCK SOLID in attempting to achieve compliance; and
- f) The effect the penalty may have on ROCK SOLID'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. Kent Kahl, WBI



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 49-23

PART A - WHO IS SUBMITTING THIS COMPLAINT (COMPLAINANT)

Company/Person WBI Energy/Kent Kahl	Street Address 1260 West Century Avenue	City Bismarck	State and Zip Code ND 58506
Telephone and Cell Phone Number 406-349-7222 / 406-696-8216	Email Address Kent.Kahl@wbienergy.com		Date 7/22/14
<input type="checkbox"/> Complaint 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 Rock Solid Excavating Inc. / Mark Todd	Street Address PO Box 235	City Park City	State and Zip Code MT 59063
Telephone and Cell Phone Number 406-991-2906	Email Address rocksolidexcavating@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 this 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:
White Tail Circle - Williston, ND

Date and Time of Violation:
7/26/14

Description (summarize the observations on which you rely to allege the violation) if more space is required, please provide the description on a separate page.
 On July 18, 2014 Rock Solid Excavating Inc. proceeded to excavate without a locate request to install a water service line to a new home being constructed off of White Tail Circle in Williston, ND. WBI received a call explaining the steel gas pipeline had been hit by an excavator at 2:00 pm CDT. WBI sent emergency personnel immediately to determine the extent of the damage. The damage consisted of a dented pipeline with several gouges. WBI installed a composite repair sleeve in order to avoid blowing down the pipeline section and to maintain service to customers.

PART D - DAMAGE

Fatalities N/A	Injures N/A	In-patient Hospitalization N/A
Underground facility type(s) and Operator(s) affected: steel natural gas transmission pipeline		
Estimated Value of Damage (damage as defined under NDCC Chapter 49-23): \$ \$5,506.00	Number of Customers Affected 0	
Other Impact of event: Several WBI personnel were involved with assessing the damage, determining the appropriate repair method, and installing the composite repair sleeve.		
Please attach photos of Event Area or Damaged Facility		

PART I - SIGNATURE

Signature of Person Filing Complaint Kent Kahl	Date 7/22/14
---	-----------------

Send Completed, Original Complaint To:
 Public Service Commission
 600 E Boulevard Ave Dept 406
 Bismarck ND. 58505-0480
 Telephone: (701) 328-2400

1 GS-14-633 Filed: 7/22/2014 Pages: 1
 Third party damage complaint

WBI Energy Transmission, Inc.
 Kent Kahl

APPROVED

DATE: 2-10-16
[Signature]

MOTION

February 10, 2016

**Public Service Commission
Rock Solid Excavating, Inc.
Damage Prevention Enforcement**

Case No. GS-14-633

I move the Commission find the Formal Complaint filed by the North Dakota Public Service Commission Advocacy Staff on January 13, 2016, states a *prima facie* case, and serve the Complaint on the Respondent in Public Service Commission, Rock Solid Excavating, Inc., Damage Prevention Enforcement, Case No. GS-14-633.