

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

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<b>PUBLIC SERVICE COMMISSION,</b>	)	<b>Case No. PU-15-675</b>
	)	
<b>Complainant,</b>	)	
	)	
<b>vs.</b>	)	<b>NOTICE OF MOTION FOR</b>
	)	<b>ORDER OF DEFAULT</b>
	)	
<b>Kollman Construction,</b>	)	
	)	
<b>Respondent</b>	)	

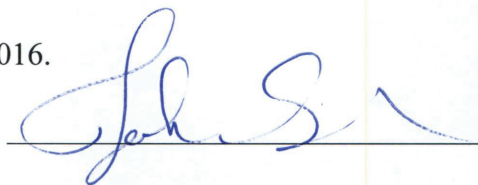
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**TO: Respondent Kollman Construction** (Kollman), 14 3<sup>rd</sup> Ave, SW Hazen, ND 58545.

**PLEASE TAKE NOTICE** that the Public Service Commission, Advocacy Staff, Movant in the above proceeding, respectfully moves for an order declaring Kollman in default. The motion is attached to this notice and by reference made a part hereof.

**YOUR ARE HEREWITH NOTIFIED** that the Notice of Motion and Motion for Judgment of Default has been submitted pursuant to N.D.C.C. § 28-32-21(e) and N.D. Admin. Code art. 69-02. The Public Service Commission may deem the Formal Complaint admitted and may enter an order in default as the facts and law may warrant. If the Public Service Commission rules in favor of Advocacy Staff's motion, you have (7) days after service of the default notice, order and grounds to file a written motion with the Public Service Commission requesting that the default order be vacated and stating the grounds relied upon.

Bismarck, North Dakota, this 29<sup>th</sup> day of April, 2016.

A handwritten signature in blue ink, appearing to read "John M. Schuh", written over a horizontal line.

John M. Schuh (ND ID # 08138)  
Advocacy Staff Counsel  
600 E Boulevard Ave – Dept 408  
Bismarck, ND 58505  
(701) 328-2400

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	)	
<b>Complainant,</b>	)	
	)	
<b>vs.</b>	)	<b>MOTION FOR</b>
	)	<b>ORDER OF DEFAULT</b>
<b>Kollman Construction</b>	)	<b>AND MEMORANDUM OF</b>
	)	<b>LAW</b>
	)	
<b>Respondent</b>	)	

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**MOTION FOR ORDER OF DEFAULT**

Public Service Commission Advocacy Staff (Advocacy Staff) respectfully seeks an order in default against Respondent, Kollman Construction (Kollman). In support of the motion, Advocacy Staff states the following:

**MEMORANDUM**

Pursuant to N.D.C.C. § 28-32-21(e) and N.D. Admin. Code § 69-02-02-03(1), a Formal Complaint “may inform the respondent that an answer to the complaint must be served upon the complainant and the agency with which the complaint is filed within twenty days after service of the complaint, or the agency may deem the complaint to be admitted.” On 10 March 2016, Kollman received the Formal Complaint filed with the Commission via certified mail. Kollman failed to respond to the Formal Complaint within the time allotted under N.D.C.C. § 28-32-21(e). Having failed to answer the complaint, the Commission may deem the Formal Complaint to be admitted by Kollman and “enter an order in default as the facts and law may warrant.” N.D.C.C. § 28-32-21(e).

## BACKGROUND

On 18 September 2015, City of Zap submitted a ND One-call complaint alleging Kollman failed to provide an excavation notice to the North Dakota Once Call (NDOC) notification Center at least 48 hours before beginning its excavation. *See Attached ND One-Call Complaint.* On 12 September 2015, Commission Staff enclosed a copy of the ND One-Call Complaint to Kollman and requested a response and written account of the event, including the applicable One Call locate ticket number for work performed at the location listed in the ND One-Call Complaint. No response was provided to the Commission Staff.

On 10 March 2016, based on its investigation, Advocacy Staff filed a Formal Complaint alleging Kollman violated N.D.C.C. § 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. *See Attached Formal Complaint.* On 23 March 2016, the Commission found the Formal Complaint stated a *prima facie* case. Service of the Formal Complaint was initiated on 29 March 2016 via certified mail by Geralyn R. Schmaltz to Kollman Construction, 14 3<sup>rd</sup> Ave. SW, Hazen, ND 58545 (Cert. No. 7015 3010 0000 6559 9715). A return receipt for Cert. No. 7015 3010 0000 6559 9715 was signed by Todd Kollman on 5 April 2016. *See Attached Return Ticket.*

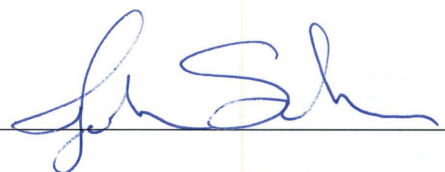
In Section X of the Formal Complaint Kollman was informed that “[t]he respondent must serve an answer to this complaint upon the Complainant and the Commission within twenty days after service of the complaint, or the Commission may deem the complaint to be admitted.” Having received no answer to the Formal Complaint by 26 April 2016, the Commission may deem the Formal Complaint to be admitted and enter an Order of Default pursuant to N.D.C.C. § 28-32-21(e).

**CONCLUSION**

For these reasons, Advocacy Staff respectfully requests the Public Service Commission enter an Order of Default against Kollman, impose an appropriate civil penalty up to \$25,000, but at least \$1,000, and such other relief that the Commission finds just and proper.

Dated: April 29<sup>th</sup>, 2016

Respectfully,

A handwritten signature in blue ink, appearing to read "J. Schuh", written over a horizontal line.

John M. Schuh (ND ID# 08138)  
Advocacy Staff  
12<sup>th</sup> Floor, Dept. 408  
600 E Boulevard Ave  
Bismarck, ND 58505  
(701) 328-2421 - jschuh@nd.gov



### 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 City of Zap	Street Address 121 main st	City Zap	State and Zip Code ND 58580
Telephone and Cell Phone Number 701-948-2256	Email Address bwinters1979@gmail.com		Date 09/18/2015
<input type="checkbox"/> 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 Kollman construction/Todd Kollman	Street Address 14 3rd Ave SW	City Hazen	State and Zip Code ND 58545
Telephone and Cell Phone Number 701-425-2509			Email Address kollmanconstruction@hotmail.com

#### PART C – ALLEGED VIOLATION

<input type="checkbox"/> Operator failed to provide or update the information provided to the notification center on a timely basis <input checked="" type="checkbox"/> Excavator failed to provide excavation or location notice at least 48 hours before beginning any excavation <input checked="" type="checkbox"/> Excavator failed to provide required information in excavation or location notice <input type="checkbox"/> Notification center failed to transmit the notice to every operator that has an underground facility in the area of the excavation <input type="checkbox"/> Notification center failed to inform the excavator of the names of operators of underground facilities in the area <input type="checkbox"/> Operator failed to locate and mark underground facility within 48 hours <input checked="" type="checkbox"/> Excavation started prior to underground facility locate <input type="checkbox"/> Operator failed to mark underground facility within 24 inches horizontally <input type="checkbox"/> Excavator failed to renew excavation or location request prior to the expiration of the twenty-one-day period <input type="checkbox"/> Excavator failed to conduct the excavation in a careful and prudent manner to avoid damage of underground facilities <input type="checkbox"/> Excavator failed to maintain the markings during excavation <input type="checkbox"/> Other (identify the specific section of NDCC Chapter 49-23) _____
Location of Violation: 2nd ave w Zap ND 58580
Date and Time of Violation: 09/18/2015 around 9:30 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>  Contractor failed to provide their own ND one call ticket was using landowners ticket did not wait for legal dig time and struck city water main disrupting service to residents on street. the ticket the contractor was using was ticket number 15168613 for Steve Stefaneky, the contractor Todd Kollman with Kollman construction did not have his own ticket.

#### PART D – DAMAGE

Fatalities None	Injuries None	In-patient Hospitalization None
Underground facility type(s) and Operator(s) affected: City Water Main		
Estimated Value of Damage (damage as defined under NDCC Chapter 49-23): \$ 5000 or less		Number of Customers Affected 8
Other impact of event:		
Please attach photos of Event Area or Damaged Facility		

#### PART I – SIGNATURE

Signature of Person Filing Complaint Benjamin Winters City Water Commissioner	Date 09/18/2015
--	--------------------

Send Completed, Original Complaint To:  
Public Service Commission  
600 E Boulevard Ave Dept 408  
Bismarck ND 58505-0480  
Telephone: (701) 328-2400







# ND ONE-CALL COMPLAINT

Public Service Commission

SFN 59067 (1-14)

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## PART A – WHO IS SUBMITTING THIS COMPLAINT (COMPLAINANT)

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Telephone and Cell Phone Number 701-948-2256	Email Address bwinters1979@gmail.com		Date 09/18/2015
<input type="checkbox"/> 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 Kollman construction/Todd Kollman	Street Address 14 3rd Ave SW	City Hazen	State and Zip Code ND 58545
Telephone and Cell Phone Number 701-425-2509	Email Address kollmanconstruction@hotmail.com		

## PART C – ALLEGED VIOLATION

<input type="checkbox"/> Operator failed to provide or update the information provided to the notification center on a timely basis <input checked="" type="checkbox"/> Excavator failed to provide excavation or location notice at least 48 hours before beginning any excavation <input checked="" type="checkbox"/> Excavator failed to provide required information in excavation or location notice <input type="checkbox"/> Notification center failed to transmit the notice to every operator that has an underground facility in the area of the excavation <input type="checkbox"/> Notification center failed to inform the excavator of the names of operators of underground facilities in the area <input type="checkbox"/> Operator failed to locate and mark underground facility within 48 hours <input checked="" type="checkbox"/> Excavation started prior to underground facility locate <input type="checkbox"/> Operator failed to mark underground facility within 24 inches horizontally <input type="checkbox"/> Excavator failed to renew excavation or location request prior to the expiration of the twenty-one-day period <input type="checkbox"/> Excavator failed to conduct the excavation in a careful and prudent manner to avoid damage of underground facilities <input type="checkbox"/> Excavator failed to maintain the markings during excavation <input type="checkbox"/> Other (identify the specific section of NDCC Chapter 49-23) _____
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Please attach photos of Event Area or Damaged Facility		

## PART I – SIGNATURE

Signature of Person Filing Complaint Benjamin Winters City Water Commissioner	Date 09/18/2015
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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



STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
Kollman Construction  
Damage Prevention Enforcement

Case No. PU-15-675

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 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:

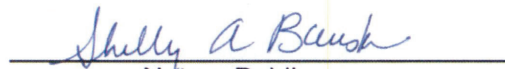
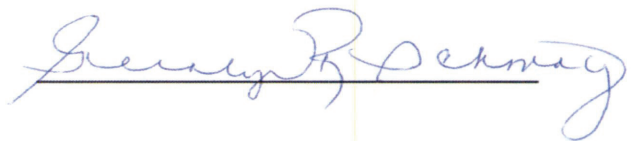
- **Complaint**
- **Motion Finding Complaint States a *Prima Facie* Case**

The envelope was addressed as follows:

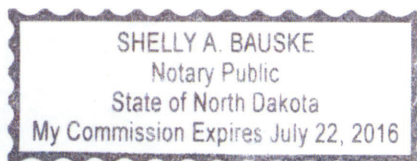
Todd Kollman  
Kollman Construction  
14 3<sup>rd</sup> Ave. SW  
Hazen, ND 58545  
**Cert. No. 7015 3010 0000 6559 9715**

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

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

  
Notary Public

SEAL



APPROVED

DATE: 3-23-16

[Signature]

MOTION

March 23, 2016

Public Service Commission  
Kollman Construction  
Damage Prevention Enforcement

Case No. PU-15-675

I move the Commission find the Formal Complaint filed by the North Dakota Public Service Commission Advocacy Staff on March 10, 2016, states a *prima facie* case and serve the complaint on the Respondent in Public Service Commission, Kollman Construction, Damage Prevention Enforcement, Case No. PU-15-675.



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 September 18, 2015, the Commission received a ND One-Call Complaint from Benjamin Winters at Zap. The complaint alleges a violation by Kollman of North Dakota Century Code section 49-23-04(1) of the One-Call Excavation Notice System by failing to provide an excavation notice to the NDOC Notification Center at least forty-eight hours before beginning its excavation.

#### V

On September 23, 2015, Commission staff issued a letter informing Kollman of Zap's complaint filing, and requested a response by October 8, 2015. As of March 10, 2016, the commission had not received a response.

#### VI

As alleged by Zap's complaint, on September 18, 2015, Kollman began an excavation as defined in North Dakota Century Code section 49-23-01(7) while performing excavation for a pole barn at 416 2<sup>nd</sup> Ave W, Zap, North Dakota. As a result of this excavation, damage was caused by a back hoe to Zap's 2 inch water main. The damaged water main was repaired by Kollman after receiving approval from Zap.

#### VII

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

at any time during this excavation project. Kollman notified Zap of the damage on September 18, 2015. 8 customers were affected with an outage of 6 hours.

Based on its investigation, Staff concluded that there was no agreement between Kollman and Zap under North Dakota Century Code section 49-23-04(1) prior to excavation that would relieve Kollman 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

Kollman 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

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.

X

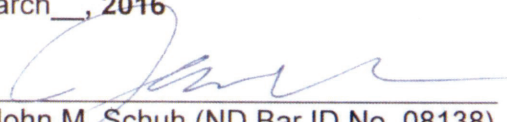
The Respondent must serve an answer to this complaint upon the Complainant and the Commission within twenty days after service of the complaint, or the Commission may deem the complaint to be admitted. Answers must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure.

#### Prayer for Relief

Based on the foregoing, Staff seeks the following relief:

1. That the Commission find Kollman 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 \$1000.
3. Such other relief that the Commission finds just and proper.

Dated this   10th   day of   March  , 2016

  
John M. Schuh (ND Bar ID No. 08138)  
Special Assistant Attorney General  
600 E Boulevard Ave  
Bismarck, ND 58505  
(701) 328-2421  
Attorney for Advocacy Staff

and

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



Public Service Commission  
State of North Dakota

COMMISSIONERS

Julie Fedorchak  
Randy Christmann  
Brian P. Kalk

Executive Secretary  
Darrell Nitschke

600 East Boulevard, Dept. 408  
Bismarck, North Dakota 58505-0480  
Web: [www.psc.nd.gov](http://www.psc.nd.gov)  
E-mail: [ndpsc@nd.gov](mailto:ndpsc@nd.gov)  
Phone: 701-328-2400  
ND Toll Free: 1-877-245-6685  
Fax: 701-328-2410  
TDD: 800-366-6888 or 711

September 23, 2015

Todd Kollman  
Kollman Construction  
PO BOX 401  
Hazen, ND 58545-0401

Re: One-Call Excavation Notice System: North Dakota Century Code Chapter 49-23

Dear Mr. Kollman:

Enclosed is a copy of a ND One-Call Complaint, with attachments, against Kollman Construction, received by the North Dakota Public Service Commission on September 18, 2015, from Benjamin Winters, at the City of Zap Water Commission, of Zap, ND, Case Number PU-15-675. The location of the damage identified in the complaint is approximately 2<sup>nd</sup> Ave W, Zap, ND.

I am sending you this information so that you are aware of the Complaint and have an opportunity to present any information you may have to assist us in processing this case. **Please respond to Darrell Nitschke, Executive Secretary, North Dakota Public Service Commission, by October 8, 2015**, with your written account of the event, including the applicable One Call locate ticket number for work performed at the address indicated.

I will review your response, the ND One-Call Complaint, and other available information to determine the next step in this matter. If I conclude there was a violation of the One Call law, I may file a formal complaint with the Commission. If I decide to proceed with a formal complaint, I will attempt to contact you in advance.

Please contact me at 701-328-3397 or at [vschock@nd.gov](mailto:vschock@nd.gov) with any questions regarding this correspondence.

Sincerely,

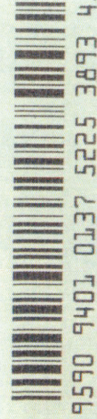
Victor Schock  
Compliance and Competitive Markets Division

Enc: ND One-Call Complaint with attachments  
c: Benjamin Winters with attachments

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Todd Kollman  
 Kollman Construction  
 14 3rd Ave. SW  
 Hazen, ND 58545  
**Cert. No. 7015 3010 0000 6559 9715**  
**PU-15-675**



2. Article Number (transfer from service label)

**7015 3010 0000 6559 9715**

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee

B. Received by (Printed Name) **Todd Kollman**

C. Date of Delivery **4-5-16**

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

**P.O. Box 401**

3. Service Type

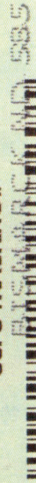
**7 PU-15-675 Filed 04/07/2016 Pages: 2**  
**Return receipt - 7015-3010-0000-6559-9715**  
**USPS**

Subject to Delivery Restricted Delivery  Signature Confirmation  
 Insured Mail  Signature Confirmation  
 Insured Mail Restricted Delivery (over \$500)  Restricted Delivery

Domestic Return Receipt

**PU-15-675**

USPS TRACKING#



7 PU-15-675 Filed: 4/7/2016 Pages: 2  
Return receipt - 7015-3010-0000-6559-9715

USPS

5, and ZIP+4® in this box\*

58545  
First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10  
HAZARD

RECEIVED  
ND Public Service Commission  
600 E. Boulevard Ave. Dept. 408  
APR - 7 2016 Bismarck, ND 58505-0480  
NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

