

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

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<b>PUBLIC SERVICE COMMISSION,</b>	)	<b>Case No. PU-15-751</b>
	)	
<b>Complainant,</b>	)	
	)	
<b>vs.</b>	)	<b>NOTICE OF MOTION FOR</b>
	)	<b>ORDER OF DEFAULT</b>
	)	
<b>Bulldog Concrete, Inc.</b>	)	
	)	
<b>Respondent</b>	)	

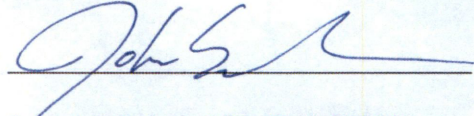
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**TO: Respondent Bulldog Concrete, Inc. (Bulldog), 1041 46<sup>th</sup> Ave. W, West Fargo, ND 58078-8809.**

**PLEASE TAKE NOTICE** that the Public Service Commission, Advocacy Staff, Movant in the above proceeding, respectfully moves for an order declaring Bulldog 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 Order 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 1<sup>st</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>PUBLIC SERVICE COMMISSION,</b>	)	<b>Case No. PU-15-751</b>
	)	
<b>Complainant,</b>	)	
	)	
<b>vs.</b>	)	<b>MOTION FOR</b>
	)	<b>ORDER OF DEFAULT</b>
<b>Bulldog Concrete, Inc.</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, Bulldog Concrete, Inc. (Bulldog). 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 25 April 2016, Bulldog received the Formal Complaint filed with the Commission via certified mail. Bulldog 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 Bulldog and “enter an order in default as the facts and law may warrant.” N.D.C.C. § 28-32-21(e).

## BACKGROUND

On 1 December 2015, Xcel Energy submitted a ND One-Call complaint alleging Bulldog 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 3 December 2015, Commission Staff enclosed a copy of the ND One-Call Complaint to Bulldog 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. Bulldog did not file a response.

On 12 April 2016, based on its investigation, Advocacy Staff filed a Formal Complaint alleging Bulldog 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 20 April 2016, the Commission found the Formal Complaint stated a *prima facie* case. Service of the Formal Complaint was initiated on 22 April 2016 via certified mail by Geralyn R. Schmaltz to Bulldog Concrete, Inc. and Registered Agent, Gary Ewald, at 1041 46<sup>th</sup> Ave W, West Fargo, ND 58078 (Cert. No. 7015 3010 0000 6559 9760 and 7015 3010 0000 6559 9777). Both return receipts were signed by B. Bosness, marked as agent, on the 25 April 2016. *See Attached Return Tickets.*

In Section X of the Formal Complaint, Bulldog 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 16 May 2016, the Commission may

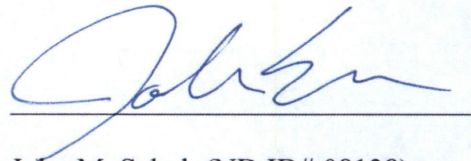
deem the Formal Complaint to be admitted and enter an Order of Default pursuant to N.D.C.C. § 28-32-21(e).

**CONCLUSION**

For these reasons, Advocacy Staff respectfully requests the Public Service Commission enter an Order of Default against Bulldog, impose an appropriate civil penalty of \$1,500, and such other relief that the Commission finds just and proper.

Dated: May 1<sup>st</sup>, 2016

Respectfully,

A handwritten signature in blue ink, appearing to read "John M. Schuh", is 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 Xcel Energy / Lisa Kallberg	Street Address 825 Rice St	City St. Paul	State and Zip Code MN 55372
Telephone and Cell Phone Number 651-229-2282	Email Address elisebeth.m.kallberg@xcelenergy.com		Date 11-30-15
<input checked="" 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 Bulldog Concrete	Street Address 1041 48th Ave W	City West Fargo	State and Zip Code ND, 58078
Telephone and Cell Phone Number 701-356-8600	Email Address		

## 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 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 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: 3662 Houkum Dr E West Fargo ND
Date and Time of Violation: July 19, 2015 8:41 pm
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> Bulldog Concrete failed to provide notification to the Once Call Center prior to excavating. damaged natural gas service line with concrete form stake.

## PART D – DAMAGE

Fatalities 0	Injuries 0	In-patient Hospitalization 0
Underground facility type(s) and Operator(s) affected: 5/8 inch natural gas service line		
Estimated Value of Damage (damage as defined under NDCC Chapter 49-23): \$ \$506		Number of Customers Affected 1
Other impact of event: none		
Please attach photos of Event Area or Damaged Facility		

## PART I – SIGNATURE

Signature of Person Filing Complaint Lisa Kallberg	Date 11-30-15
---	------------------

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

W.O.1223183303



# Damage Investigation Form

Damage Date:	<u>7/29/2015</u>	Date Notified:	<u>7/29/2015</u>	Date Investigated:	<u>7/29/2015</u>
Address:	<u>3652 Houkum Dr. E.</u>	City:	<u>West Fargo</u>	Notified by:	<u>Xcel Energy</u>
Excavator:	<u>Bulldog Concrete</u>	Ticket #:	<u>None</u>	Damage Ticket:	<u></u>
Locator:	<u>N/A</u>	Locate Date:	<u>N/A</u>	Work Type:	<u>Installing Concrete Pad</u>
Facility Damaged:	<u>5/8 PI Gas Service</u>	Equipment Used:	<u>Concrete Pin/Stake</u>		

Description of site and facility indicators: Gas meter visible in in dig area.

Utility representative on-site? Y Y/N      Excavator on-site? N Y/N  
Name of representative: Mark      Excavator name: Bulldog Concrete

**Cause of damage and circumstances:**  
Bulldog Concrete was working without a ticket and drove one of their concrete pins through the gas service.

**Preventative Actions (Only fill out for at-fault damages)**

What was the excavators determination on liability and why? Not on site

Recommendation of Liability: Bulldog Concrete

Investigator:	<u>Dakota Aanerud</u>	Date:	<u>7/29/2015</u>
Supervisor:	<u>Zach Myers</u>	Date:	<u>7/29/2015</u>
Managers Concurrence:	<u>Jason Ponciano</u>	Date:	<u>7/30/2015</u>

\*\*This document is not for third party use.\*\*

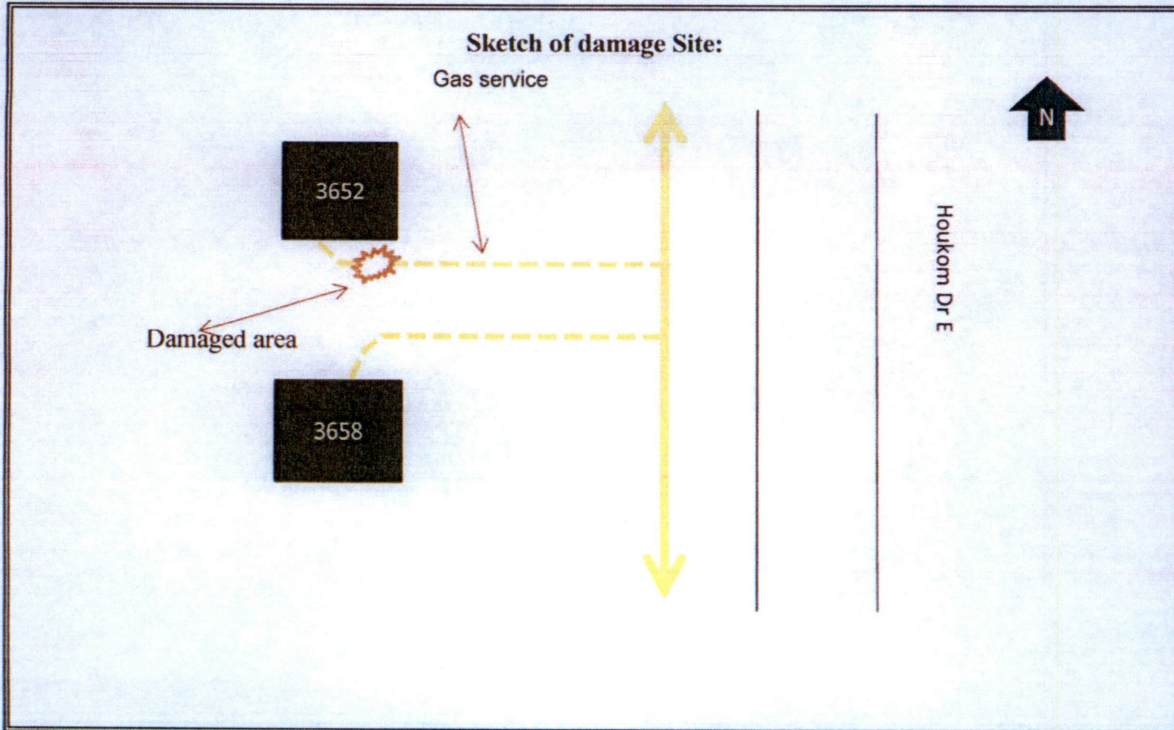
## Specific Locate Information

Mark all that apply (X)

<input type="checkbox"/>	The line was marked accurately. <i>Within tolerance by Inches</i> _____	*End Of Questions
<input type="checkbox"/>	The damaged facility is abandoned. *End of Questions*	
<input checked="" type="checkbox"/>	Excavator did not have a valid ticket. Or outside of their "Dig Area". *End of Questions	
<input type="checkbox"/>	The line should have been marked, but was unmarked.	
<input type="checkbox"/>	The marks were destroyed by:      Excavation _____ Weather _____ Other _____	
<input type="checkbox"/>	The line was unmarked but previously located.	
<input type="checkbox"/>	The excavation was out of the dig area.	
<input type="checkbox"/>	The dig area was established by a verbal exchange.	
<input type="checkbox"/>	If so, is the dig area well documented?      Yes _____ No _____	
<input type="checkbox"/>	The unmarked facility was on provided maps?      Yes _____ No _____	
<input type="checkbox"/>	The excavator knew there were unmarked lines.	
<input type="checkbox"/>	Did the excavator have any of the utilities exposed?      Yes _____ No <input checked="" type="checkbox"/>	
<input type="checkbox"/>	The line should have been marked, but was mismarked.	
<input type="checkbox"/>	The damage occurred on a project.	
<input type="checkbox"/>	The cutting edge was within 24" of the damaged line.	
<input type="checkbox"/>	The cutting edge was within 18" of the damaged line. (For South Dakota use only)	
<input type="checkbox"/>	Was the tracer wire present with the facility?      Yes _____ No _____	
<input checked="" type="checkbox"/>	Pictures of the damage were taken. _____ Locate Pictures or Sketch Available.	
<input type="checkbox"/>	How deep was the damaged facility? _____	
<input type="checkbox"/>	There was a visual indicator of the facility from the dig area.	
<input type="checkbox"/>	Distance to visual indicator? _____	
<input type="checkbox"/>	How far was the closest remaining mark to the damage? _____	

Employee Signature: \_\_\_\_\_

Date: \_\_\_\_\_



\*\*This document is not for third party use\*\*





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 December 1, 2015, the Commission received a ND One-Call Complaint from Lisa Kallberg with Xcel. The complaint alleges a violation by Bulldog 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 December 3, 2015, Commission staff issued a letter informing Bulldog of Xcel's complaint filing, and requested a response by December 18, 2015. As of April 12, 2016, the commission had not received a response.

#### VI

As alleged by Xcel's complaint, on July 29, 2015, Bulldog began an excavation as defined in North Dakota Century Code section 49-23-01(7) while performing concrete work at 3652 Houkum Dr E, West Fargo, North Dakota. As a result of this excavation, damage was caused by a stake used to hold concrete forms to Xcel's 5/8 inch natural gas service line. Xcel alleges that the cost to repair its facilities was approximately \$506.

#### VII

Based on its investigation Staff determined that Bulldog personnel failed to provide an excavation notice to the North Dakota One Call Notification Center (NDOC) for their work in the area cited in the complaint. Bulldog notified Xcel of the damage on

July 29, 2015. 1 customer was affected with an outage of approximately 2 hours. Xcel has not been reimbursed for the cost of damages from the excavation.

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

Bulldog 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

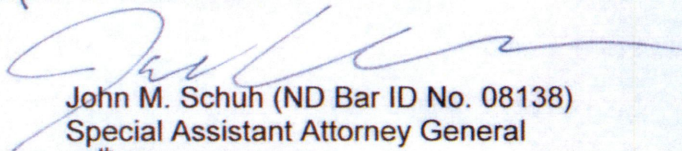
The Respondent must serve an answer to this complaint upon the Complainant and the Commission within twenty days after service of the complaint, or the Commission may deem the complaint to be admitted. Answers must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure.

#### Prayer for Relief

Based on the foregoing, Staff seeks the following relief:

1. That the Commission find Bulldog 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 \$1500.
3. Such other relief that the Commission finds just and proper.

Dated this 12<sup>th</sup> day of April, 2016



John M. Schuh (ND Bar ID No. 08138)  
Special Assistant Attorney General  
12<sup>th</sup> Floor, Dept. 408  
600 E. Boulevard Ave  
Bismarck, ND 58505  
jschuh@nd.gov – (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**

**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.

Bulldog Concrete, Inc.  
1041 46th Avenue W  
West Fargo, ND 58078

**Cert. No. 7015 3010 0000 6559 9760**  
**PU-15-751**




9590 9402 1366 5285 5129 94

**2. Article Number (Transfer from service label)**

**Cert. No. 7015 3010 0000 6559 9760**

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

**COMPLETE THIS SECTION ON DELIVERY**

- A. Signature   Agent  Addressee
- B. Received by (Printed Name) B. BOSSNER C. Date of Delivery 4-25-16
- D. Is delivery address different from item 1?  Yes  No  
If YES, enter delivery address below:

8 PU-15-751 Filed 04/28/2016 Pages: 2  
Return receipt - 7015-3010-0000-6559-9760  
USPS

- Certified Mail®  Delivery
- Certified Mail Restricted Delivery  Return Receipt for Merchandise
- Collect on Delivery  Signature Confirmation™
- Insured Mail Restricted Delivery (over \$500)  Restricted Delivery

Domestic Return Receipt

PU-15-751

USPS TRACKING#



8 PU-15-751 Filed: 4/28/2016 Pages: 2  
Return receipt - 7015-3010-0000-5559-9760

USPS

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

and ZIP+4® in this box\*

ND Public Service Commission  
600 E. Boulevard Ave Dept 408  
Bismarck, ND 58505-0480

APR 28 2016

NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

**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.

Gary Ewald  
 Registered Agent for Bulldog Concrete, Inc.  
 1041 46th Avenue W  
 West Fargo, ND 58078-8809  
 Cert. No. 7015 3010 0000 6559 9777  
 PU-15-751



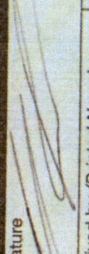
9590 9402 1366 5285 5130 07

2. Article Number (transfer from service label)

**Cert. No. 7015 3010 0000 6559 9777**

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

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature   Agent  Addressee

B. Received by (Printed Name) B. Barnes C. Date of Delivery 4-25-16

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

7 PU-15-751 Filed 04/28/2016 Pages: 2  
 Return receipt - 7015-3010-0000-6559-9777  
 USPS

Adult Signature  Registered Mail™  
 Adult Signature Restricted Delivery  Registered Mail Restricted Delivery  
 Certified Mail®  Return Receipt for Merchandise  
 Certified Mail Restricted Delivery  Signature Confirmation™  
 Collect on Delivery Restricted Delivery  Signature Confirmation Restricted Delivery  
 Insured Mail (over \$500)

PU-15-751 Domestic Return Receipt

USPS TRACKING #



7 PU-15-751 Filed: 4/28/2016 Pages: 2  
Return receipt - 7015-3010-0000-6559-9777

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

ZIP+4® in this box\*

USPS

Unit  
Pos

ND Public Service Commission  
600 E. Boulevard Ave. Dept. 408  
Bismarck, ND 58505-0480

APR 28 2016

NORTH DAKOTA  
PUBLIC SERVICE COMMISSION