

April 2, 2018



Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
600 E Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480

Re: ND One-Call Complaint – Case Number PU-18-108 - Conley Post/Post Construction

Dear Mr. Nitschke;

Montana-Dakota Utilities Co. (MDU) received a locate request, locate number 17092276, for Post Construction for a water main replacement project. MDU responded to the request and located the gas main facilities within the excavation area for the project described in the above subject complaint. MDU's gas main facilities were located accurately; however, the damaged facilities were short stub lines from the main. Because of the relatively short length of these stub facilities, which were unmapped pre-1955 steel pipe, they were not locatable. The unlocatable facilities were the facilities damaged by Post Construction. MDU repaired the damaged facilities at no cost to Post Construction.

Post Construction had contacted me requesting payment for down-time, for the time while MDU was making repairs to their facilities. MDU was not negligent in its marking of the underground facilities, and therefore any payment for down-time was denied.

Section 49-23-04(6)(m) of the one-call law impliedly recognizes that not all facilities pre-existing the one-call law are locatable as it only requires all "new facilities" to be locatable. When an operator is unable to locate its facilities within the designated excavation area, and those facilities are damaged as a result of excavation, the excavator is not required to reimburse the operator for the damage to the facility which is the remedy available to the excavator under the one-call law. In particular, there is no provision under the one-call law allowing the Public Service Commission to award damages to the excavator.

Sincerely



Curt Olson
District Manager

enclose. PSC Notice Letter & ND One-Call Complaint
cc: Mike Schoepp – MDU Director, Operation Services

3 **PU-18-108** Filed: 4/4/2018 Pages: 3
Response to North Dakota One-Call Complaint



Public Service Commission State of North Dakota

COMMISSIONERS

Randy Christmann
Julie Fedorchak
Brian Kroshus

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: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

March 28, 2018

Curt Olson
Montana-Dakota Utilities
1130 20th Ave SW
Minot, ND 58701

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

Dear Mr. Olson:

Enclosed is a copy of a ND One-Call Complaint, against Montana-Dakota Utilities, received by the North Dakota Public Service Commission on March 27, 2018, from Conley Post, at Post Construction, Inc., of Minot, ND, Case Number PU-18-108. The location of the damage identified in the complaint is approximately the intersection of Summit Dr and Avenue A SW, Minot, ND.

I am sending you this information so that you are aware of the complaint and may respond with information concerning the complaint. **Please respond to Darrell Nitschke, Executive Secretary, North Dakota Public Service Commission, 600 East Boulevard Avenue, Dept 408, Bismarck, ND 58505-0480 by April 13, 2018**, with your written account of the event, including the applicable One Call locate ticket number for work performed at the address indicated.

Your response and the ND One-Call Complaint will be reviewed to determine whether there may be a violation of the One-Call Excavation Notice System law.

If I do not receive a response by the date noted, I will determine whether there was a violation, without your side of the story, based on the facts contained in this complaint. If I conclude a violation did occur I will file a formal complaint against Montana-Dakota Utilities with the Commission, which may result in a penalty up to \$25,000 per violation as approved by the North Dakota Legislative Assembly in 2013 under North Dakota Century Code Section 49-07-01.1.

Please contact me at 701-328-3397 or at vschock@nd.gov with any questions regarding this correspondence.

Sincerely,

A handwritten signature in blue ink, appearing to read "V. Schock".

Victor Schock
Public Utilities Division
North Dakota Public Service Commission
600 E Boulevard Ave, Dept 408
Bismarck, ND 58505-0480

Enc: ND One-Call Complaint
c: Conley Post with attachments



ND ONE-CALL COMPLAINT

Public Service Commission

SFN 59067 (5-17)

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 post construction inc	Street Address 3003 valley st	City minot	State and Zip Code nd 58701
Telephone and Cell Phone Number 701-726-6386	Email Address postconstruction@art.com		Date 3/28/2018
<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 montana Dakota utilities or locating rep	Street Address	City	State and Zip Code
Telephone and Cell Phone Number			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 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 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 checked="" type="checkbox"/> Other (Identify the specific section of NDCC Chapter 49-23) <u>operator couldn't locate, and our crews broke 2 laterals</u>

Location of Violation:
summit drive minot nd

Date and Time of Violation:
8-21-2017, and 8/22-2017 mid morning both days

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.*
 post construction was hired to do a watermain replacement project, in 2017. a portion of project took place on summit drive, the area was located with number 17092276 originally and re marked with ave a when project moved that way. on august 21 post crews hit an old gas line service and notified mdu, who repaired while post crews remained on site and assisted, the stub line was never located and explained that it could not be, we encountered again the next day resulting in lost time and revenue for our company. we are seeking compensation for this lost time.

PART D – DAMAGE

Fatalities	Injuries	In-patient Hospitalization
Underground facility type(s) and Operator(s) affected: montana Dakota utilities		
Estimated Value of Damage (damage as defined under NDCC Chapter 49-23): \$		Number of Customers Affected
Other impact of event:		
Please attach photos of Event Area or Damaged Facility		

PART I – SIGNATURE

Signature of Person Filing Complaint conley post	Date 3/27/2018
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Submit

If the "Submit" function is not working properly, please print the completed form and then either email to ndpsc@nd.gov, fax to 701-328-2410 or send to Public Service Commission, 600 E Boulevard Ave Dept 408, Bismarck ND 58505-0480.

Telephone: (701) 328-2400