

January 17, 2019

VIA E-MAIL AND U.S. MAIL

Steve Kahl
Interim Executive Secretary
North Dakota Public Service Commission
600 East Boulevard Avenue
Department 408
Bismarck, ND 58505-0480

skahl@nd.gov

Victor Schock
Public Utilities Division
North Dakota Public Service Commission
600 East Boulevard Avenue
Department 408
Bismarck, ND 58505-0480

vschock@nd.gov

**Re: North Dakota One-Call Excavation Notice System
1320 Sheyenne Avenue, West Fargo, North Dakota
Victor Schock's January 2, 2019, Letter and North Dakota One-Call
Complaint**

Dear Mr. Kahl and Mr. Schock:

I represent Fox Underground, Inc. ("Fox").

I am following up on my voice-mail message that I left for Mr. Schock today and my subsequent telephone conversation with Mr. Schock this afternoon.

First, I have addressed this letter to both Mr. Schock and Steve Kahl, as Mr. Schock explained that Darrell Nitschke has left the North Dakota Public Service Commission and that Steve Kahl is serving as the North Dakota Public Service Commission's Interim Executive Secretary.

Please let me know if I should submit this letter on Fox's behalf to anyone else who works at the North Dakota Public Service Commission.

Second, Fox contests the allegations in Mr. Schock's January 2, 2019, letter and the attached ND One-Call Complaint issued by the Public Service Commission. Fox denies all liability. Fox respectfully requests the opportunity to provide a more detailed response regarding its position and to have a formal hearing, if necessary.

Fox made 47 requests for utility locates on this construction project through the North Dakota One-Call system. Making 47 requests for utility locates confirms that Fox was hyper diligent about ensuring that locate requests were submitted on a timely basis under the North Dakota One-Call System.

3 PU-18-410 Filed 01/17/2019 Pages: 5
Response to North Dakota One-Call Complaint
Fox Underground
Aaron Dean, Moss & Barnett

January 17, 2019
Page 2

During the process of exposing one existing utility line – as part of making 47 requests for utility locates – a Fox employee dinged an existing utility with a hand shovel. This was not negligent in any way. The existing utility obstructions made it very difficult to progress with Fox's work.

Enclosed is a handwritten list showing the 47 locate call requests made by Fox. The date of each locate request and each locate ticket is shown on this handwritten list. Making 47 requests for utility locates is the very definition of being hyper vigilant and diligent.

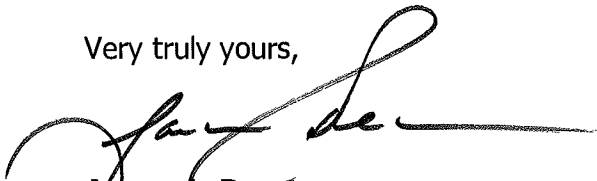
The ND One-Call Complaint filed by Xcel Energy alleges that Fox did not conduct its excavation "in a careful and prudent manner to avoid damage of underground facilities." A copy of the ND One-Call Complaint is enclosed for your convenient reference.

The Xcel Energy Complaint alleges that Fox hit a utility line on September 19, 2018. As you can see from the attached handwritten list of utility locate requests, Fox had already submitted either 44 or 45 utility locate requests on or before September 19, 2018, at the time of the one utility line ding.

Please note that Fox was using hand shovels at the time of the incident. Fox was being very careful with its work. In short, Fox denies that its work was not careful and was not prudent. Fox looks forward to continuing its discussion with the North Dakota Public Utilities Commission to explain its position and verify that its work was careful and prudent every step of the way.

Thank you.

Very truly yours,



Aaron A. Dean

Attorney at Law

P: (612) 877-5255 F: (612) 877-5033

Aaron.Dean@lawmoss.com

AD/peh

Enclosures

C: Guy Fox, Fox Underground, Inc. (w/Enc.)

4528793v1

Steyenne

4-23-18	18017856	8-13-18	18104810
4-24-18	18018615	8-13-18	18104815
5-8-18	18030693	8-20-18	18109991
5-24-18	18042356	8-24-18	18113678
5-25-18	18046401	8-28-18	18115613
5-25-18	18046392	8-28-18	18115621
5-25-18	18046378	8-28-18	18115666
5-30-18	18049221	8-31-18	18118534
6-01-18	18050941	8-31-18	18118540
6-06-18	18054872	9-05-18	18121031
6-14-18	18059213	9-05-18	18121001
6-15-18	18062153	9-10-18	18124326
6-15-18	18062157	9-12-18	18126436
6-15-18	18062161	9-17-18	18129657
6-15-18	18062165	9-19-18	18131523
6-15-18	18062181	9-19-18	18131530
6-25-18	18069350	9-21-18	18133601
6-25-18	18069369	9-25-18	18135387
6-25-18	18069378		
6-29-18	18072897		
6-29-18	18072898		
6-29-18	18072900		
7-05-18	18075475		
7-09-18	18077219		
7-09-18	18077245		
7-12-18	18081526		
8-9-18	18102518		
8-9-18	18102523		
8-13-18	18104799		



Public Service Commission State of North Dakota

COMMISSIONERS

Randy Christmann
Julie Fedorchak
Brian Kroshus

Executive Secretary
Darrell Nitschke

January 2, 2019

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
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

Fox Underground, Inc.
Guy B Fox
PO BOX 739
West Fargo, ND 58078-0739

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

Dear Guy:

Enclosed is a copy of a ND One-Call Complaint, with attachments, against Fox Underground, Inc., received by the North Dakota Public Service Commission on December 4, 2018, from Lisa Kallberg at Xcel Energy, of St. Paul, MN, Case Number PU-18-410. The location of the damage identified in the complaint is approximately 1320 Sheyenne, West Fargo, 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 January 17, 2019**, 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 Fox Underground 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,

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 with attachments
c: Lisa Kallberg 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 Lisa Kallberg	Street Address 825 Rice St	City St. Paul	State and Zip Code MN 55117
Telephone and Cell Phone Number 651-229-2282, 651-788-0848	Email Address elisabeth.m.kallberg@xcelenergy.com		Date December 4, 2018
<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 Fox Underground	Street Address PO Box 739	City West Fargo	State and Zip Code ND 58078
Telephone and Cell Phone Number 701-492-2778	Email Address guy@foxunderground.net		

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 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 checked="" 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: 1320 Shoyenne West Fargo, ND
Date and Time of Violation: September 19, 2018 approximately 2:00 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> Fox Underground was trenching in a sewer main with an excavator when they hit an accurately marked 5/8 PE SVC. Contractor failed to properly expose service before digging.

PART D – DAMAGE

Fatalities 0	Injuries 0	In-patient Hospitalization 0
Underground facility type(s) and Operator(s) affected: Xcel Energy 5/8 Inch PE natural gas service line		
Estimated Value of Damage (damage as defined under NDCC Chapter 49-23): \$ \$730	Number of Customers Affected 1	
Other impact of event:		
Please attach photos of Event Area or Damaged Facility		

PART I – SIGNATURE

Signature of Person Filing Complaint Lisa Kallberg	Date December 4, 2018
---	--------------------------

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

Telephone: (701) 328-2400

1 PU-18-410 Filed: 12/4/2018 Pages: 3
North Dakota One-Call Complaint

Northern States Power Company

Lisa Kallberg