

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Magnum Electric, Inc.
Damage Prevention Enforcement

Case No. PU-20-279

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 **15th day of July 2021** she deposited in the United States Mail at Bismarck, North Dakota, **two** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

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

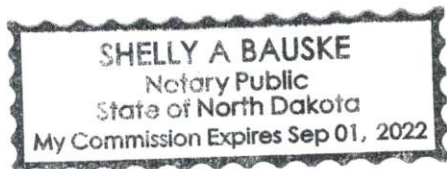
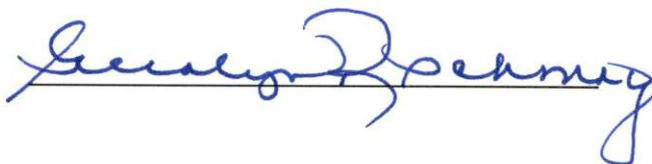
The envelopes were addressed as follows:

Magnum Electric, Inc.
471 Christianson Dr
West Fargo, ND 58078
Cert. No. 7020 1810 0000 0894 2257

Pam Kriz
Registered Agent for Magnum Electric
5354 42nd St. S Suite A
Fargo, ND 58104-4032
Cert. No. 7020 1810 0000 0894 2264

Each address shown is the respective addressee's last reasonably ascertainable post office mail address.

Subscribed and sworn to before me
this **15th day of July 2021**.



SEAL



Notary Public

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

Public Service Commission
Magnum Electric, Inc.
Damage Prevention Enforcement

Case No. PU-20-279

Public Service Commission,)	
Complainant,)	
vs.)	
Magnum Electric, Inc.,)	Complaint
Respondent.)	

The Public Service Commission of North Dakota (Commission), by and through Advocacy Staff (Staff), for its complaint against Magnum Electric, Inc., alleges and shows the following:

I

Magnum Electric, Inc. (Magnum) is a foreign Corporation authorized to do business in North Dakota with offices located at 471 Christianson Dr, West Fargo, ND 58078-83041, and a registered agent address of Pam Kriz, 5354 42nd St S, Suite A, Fargo, ND 58104-4032.

II

Montana-Dakota Utilities Co. (MDU) is a foreign corporation authorized to do business in North Dakota.

III

North Dakota Century Code (NDCC) section 49-23-04(1) provides:

Except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice before beginning any excavation. An excavation begins the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice.

NDCC 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.

NDCC 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 June 24, 2020, the Commission received a ND One-Call Complaint from Toby Gross at MDU. The complaint alleges a violation by Magnum of NDCC section 49-23-04(1) of the One-Call Excavation Notice System by failing to provide an excavation or location notice before beginning any excavation.

V

On June 25, 2020, Commission staff issued a letter informing Magnum of MDU's complaint filing, and requested a response by July 10, 2020, attached as Exhibit 1. As of June 22, 2021, Magnum has not responded to the letter or a subsequent email sent to Magnum on June 4, 2021 and a voicemail left for Magnum on June 3, 2021.

VI

As alleged by MDU's complaint, on June 18, 2020, Magnum began an excavation as defined in NDCC section 49-23-01(7) while performing parking lot light installation at 6002 N 19th St, Bismarck, ND. There is no evidence of Magnum contacting the North Dakota One Call Notification Center prior to beginning this excavation. As a result of this excavation MDU's 1 ¼" natural gas service line was damaged. MDU alleges the cost of repairs was approximately \$1200.

VII

Magnum violated NDCC section 49-23-04(1) by failing to provide an excavation or location notice before beginning any excavation.

VIII

The 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.

IX

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 Magnum Electric, Inc. in violation of NDCC chapter 49-23 for failing to comply with the One Call requirements enumerated in NDCC section 49-23-04(1).
2. That the Commission impose an appropriate civil penalty up to \$25,000, but at least \$1,500.
3. Such other relief that the Commission finds just and proper.

Dated this 22nd day of June, 2021.



Brian Johnson
Special Assistant Attorney General Bar ID 07937
North Dakota Public Service Commission
600 East Boulevard Avenue Dept. 408
Bismarck ND, 58505
701-328-2407



Public Service Commission
State of North Dakota

COMMISSIONERS

Brian Kroshus
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Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

June 25, 2020

Magnum Electric, Inc.
Mike Graham
5354 42nd St S, Suite A
Fargo, ND 58104-4032

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

Dear Mike:

Enclosed is a copy of a ND One-Call Complaint, against Magnum Electric, Inc., received by the North Dakota Public Service Commission on June 24, 2020, from Toby Gross at Montana Dakota Utilities, of Bismarck, ND, Case Number PU-20-279. The location of the damage identified in the complaint is approximately 6002 N 19th St, Bismarck, 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 Executive Secretary, North Dakota Public Service Commission, 600 East Boulevard Avenue, Dept 408, Bismarck, ND 58505-0480 by July 10, 2020**, 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 Magnum Electric, Inc. 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
c: Toby Gross

2 **PU-20-279** Filed: 6/25/2020 Pages: 6
Letter enclosing North Dakota One-Call Complaint



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 Montana Dakota Utilities/Toby Gross	Street Address 909 Airport Rd	City Bismarck	State and Zip Code ND 58504
Telephone and Cell Phone Number 701-224-5827	Email Address toby.gross@mdu.com		Date 6/24/2020
<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 Magnum Electric	Street Address 820 S 18th St	City Bismarck	State and Zip Code ND 58504
Telephone and Cell Phone Number 701-751-3033	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: 6002 N 19th St, Bismarck ND
Date and Time of Violation: 6-18-2020 notified at 8:58 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> Excavator was trenching to install parking lot lights at 6002 N 19th St Bismarck ND. While trenching they trenched through the 1 1/4" service line causing a break in the line. Upon arrival our emergency responders did not see any locates and the excavator did not have a valid locate for the area where the service line damage occurred.

PART D – DAMAGE

Fatalities None	Injuries None	In-patient Hospitalization None
Underground facility type(s) and Operator(s) affected: Natural Gas Service Line Montana Dakota Utilities		
Estimated Value of Damage (damage as defined under NDCC Chapter 49-23): \$ \$1200	Number of Customers Affected 1	
Other impact of event: None		
Please attach photos of Event Area or Damaged Facility		

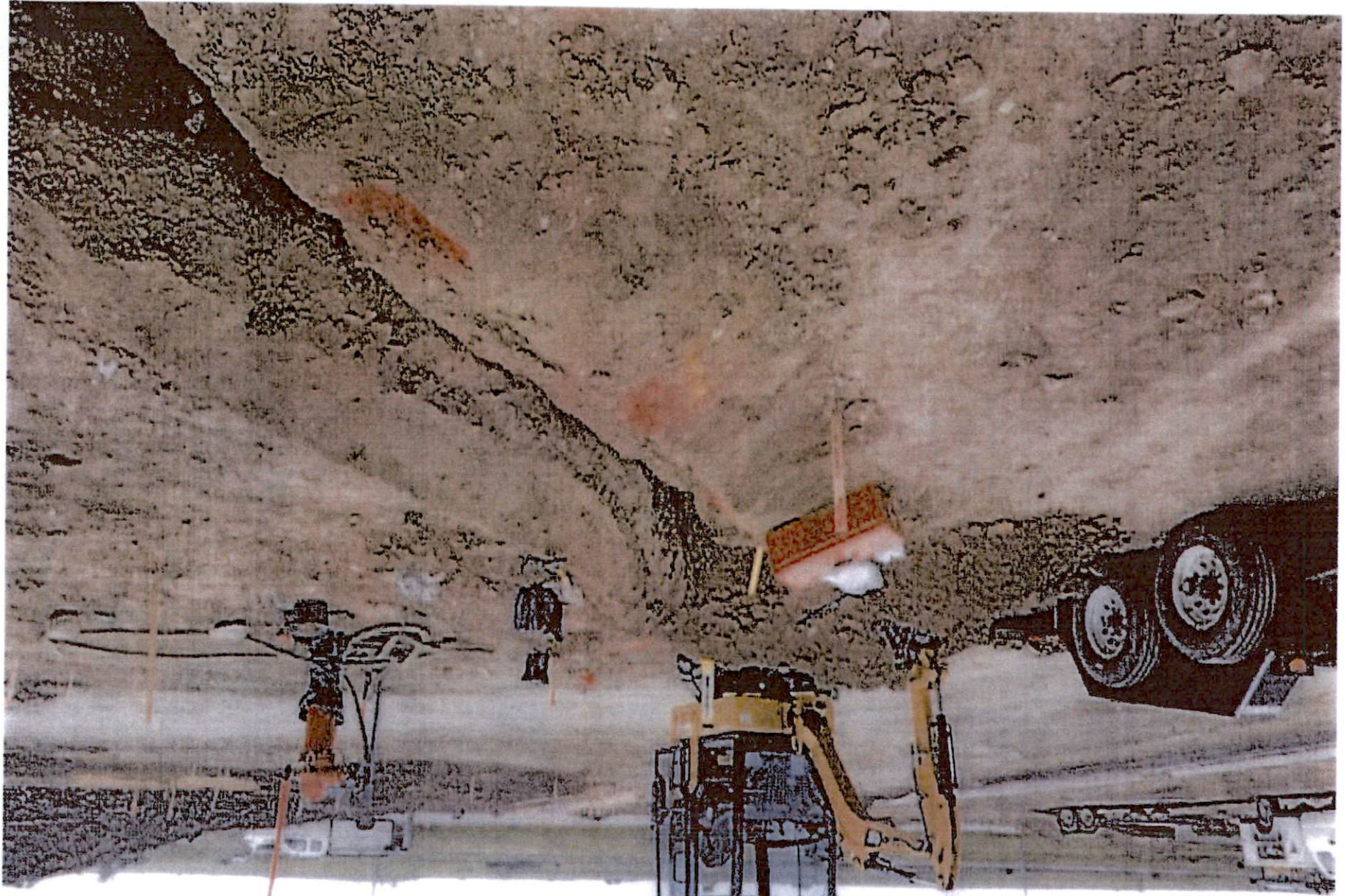
PART I – SIGNATURE

Signature of Person Filing Complaint Toby Gross	Date 6/24/2020
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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









APPROVED

DATE: 07/14/2021
PJT

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Magnum Electric, Inc.
Damage Prevention Enforcement

Case No. PU-20-279

MOTION

July 14, 2021

I move the Commission find the Formal Complaint filed by the North Dakota Public Service Commission Advocacy Staff on June 22, 2021, states a *prima facie* case, and serve the Complaint on the Respondent in Public Service Commission, Magnum Electric, Inc., Damage Prevention Enforcement, Case No. PU-20-279.

PJF