



Public Service Commission
State of North Dakota

COMMISSIONERS

Randy Christmann
Sheri Haugen-Hoffart
Julie Fedorchak

**RESPONSE REQUIRED BY
OCTOBER 28, 2024**

October 7, 2024

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

Gary Jacobson
Valley City Public Works
PO Box 240
Valley City ND 58072

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

Enclosed is a copy of the North Dakota One-Call Complaint against Valley City Public Works received by the North Dakota Public Service Commission (Commission) on August 20, 2024, from Ashley Tostenson, Valley City, North Dakota, Case Number DM-24-318. The location is identified in the complaint.

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 October 28, 2024**, with your written account of the event, including the applicable One-Call locate ticket number(s) for work performed at the location identified in the complaint and in connection with the enclosed complaint.

Your response and the North Dakota 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 with the Commission a formal complaint against Valley City Public Works, which may result in a civil penalty up to \$25,000 per violation in accordance with North Dakota Century Code Section 49-07-01.1.

Please contact me at 701-328-4097 or kcrockford@nd.gov with any questions regarding this correspondence.

Sincerely,

Konrad Crockford
Director, Compliance Division

Enclosure: North Dakota One-Call Complaint



ONE-CALL COMPLAINT
PUBLIC SERVICE COMMISSION
 SFN 59067 (08/2022)

INSTRUCTIONS: To allege a violation of the One-Call Excavation Notice System (N.D.C.C. Chapter 49-23), complete this form in its entirety.

SECTION I – COMPLAINANT (Individual/entity completing form)

Company/Entity Name (if applicable) Ashley Tostenson			
Contact Person Ashley Tostenson	Email Address ashley.tostenson@gmail.com	Telephone Number 701-251-8594	
Mailing Address 645 2nd St NE	City Valley City	State ND	Zip Code 58072
Complainant is willing and able to testify on the complaint if matter proceeds to a formal hearing.			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

SECTION II – RESPONDENT (Individual/entity who allegedly violated the One-Call law)

Company/Entity Name (if applicable) Valley City Public Works			
Contact Person Gary Jacobson	Email Address gjacobson@valleycity.us	Telephone Number 701-845-8129	
Mailing Address PO Box 240	City Valley City	State ND	Zip Code 58072

SECTION III – ALLEGED VIOLATION

OPERATOR – A person or entity who owns or operates an underground facility (i.e.: natural gas, electric, sewer, etc.).

Operator failed to mark or clear underground facility within locate period. Operator failed to mark underground facility within 24 inches horizontally.

EXCAVATOR – A person or entity who conducts excavation (i.e.: homeowner, property owner, company, etc.).

Excavation started prior to underground facility locate. Excavator failed to provide locate notice prior to beginning excavation.

Excavator failed to conduct the excavation in a careful and prudent manner. Excavator failed to renew locate request prior to expiration of the 21-day period.

OTHER – May be issue/concern with One-Call Center or other alleged violation that is not listed under operator or excavator.

Write Issue/Concern: _____

SECTION IV – DESCRIPTION/DAMAGE

Date and Time of Event 8/9/12	Location (Address, City, State / Nearest Intersecting Streets / Lat & Long) 645 2nd St NE	One-Call Ticket Number 24068296
Underground Facility Affected <input checked="" type="checkbox"/> Electric <input type="checkbox"/> Gas <input type="checkbox"/> Cable <input type="checkbox"/> Communications <input type="checkbox"/> Water <input type="checkbox"/> Sewer/Storm Water <input type="checkbox"/> Petroleum <input type="checkbox"/> Other _____		
Material & Size of Underground Facility (Poly, Steel, Coated Pipe / Fiberoptic / 2 KW / 1.5 in, 2 in / etc.) 240v? 3 stranded plus 2 phone lines		Operator(s) Affected VCPW
Estimated Value of Damage 1047.84	Injuries (List Number, If Any) Fatalities _____ Injuries _____ Hospitalizations _____	Number of Customers Affected 1
Description of the alleged violation/concern. If more space is required, attach additional page(s). Utility on ticket were unmarked, yard was given "All Clear" flags and when we dug the second post hole we struck the unmarked power lines. There was also two phone lines that were unmarked or abandoned but they were not damaged.		

SECTION V – SIGNATURE OF COMPLAINANT

Signature 	Printed Name Ashley TOSTENSON	Date 8/20/2024
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Please email the completed form to ndpsc@nd.gov, fax to 701-328-2410, or mail to: Public Service Commission
 600 E. Boulevard Ave. Dept 408
 Bismarck ND 58505-0480

Crockford, Konrad S.

From: Daniel Tostenson <dtostens@yahoo.com>
Sent: Tuesday, August 20, 2024 12:36
To: Crockford, Konrad S.
Cc: Ashley Tostenson
Subject: Fw: INV00768 (NDOC Ticket # 24068296)
Attachments: Dingo Rental.jpg; NDOC (2).jpeg; NDOC (1).jpeg; INV00768.jpeg

You don't often get email from dtostens@yahoo.com. [Learn why this is important](#)

***** **CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe. *****

Konrad,

Please see emails history below, I am still waiting to hear back from Valley City Public Works. I am including the attachments I provided in the original email. Please let me know if you have any questions or recommendations on how to handle the situation.

Dan Tostenson
701-658-0451

----- Forwarded Message -----

From: Connie Schmidt <connie@occinc.com>
To: Daniel Tostenson <dtostens@yahoo.com>
Sent: Tuesday, August 20, 2024 at 08:49:24 AM CDT
Subject: Re: INV00768 (NDOC Ticket # 24068296)

Hello Daniel.

First off, I am thankful no one was injured. The call center only notifies the utilities of planned excavation, which you clearly followed. The utility then marks their lines and status them accordingly. I would encourage you to reach out to the Public Service Commission which oversees situations such as this for assistance in this matter. I have included our PSC contact information below.

Konrad Crockford

kcrockford@nd.gov

Please keep me posted on your progress.

Connie

Connie Schmidt, SHRM-SCP, SPHR

General Manager

One Call Concepts, Inc.

Mobile: 414-915-4843

www.occinc.com

From: Daniel Tostenson <dtostens@yahoo.com>
Date: Monday, August 19, 2024 at 11:15 PM
To: gjacobson@valleycity.us <gjacobson@valleycity.us>, jkiefert@valleycity.us <jkiefert@valleycity.us>, lglaser@valleycity.us <lglaser@valleycity.us>
Cc: Ashley Tostenson <ashley.tostenson@gmail.com>, Christin Weaver <christinw@occinc.com>, Connie Schmidt <connie@occinc.com>
Subject: INV00768 (NDOC Ticket # 24068296)

Dear VCPW,

I am writing this letter on behalf of my daughter Ashely Tostenson and INV00768 which she received in the mail on 8/19/2024.

Ashley Tostenson

645 2nd St. NE

Valley City, ND 58072

On 8/9 I rented a Dingo with bucket and power auger to assist the building of a fence in my daughters back yard. It was my intent to drill the required holes that evening of 8/9 and return the unit to Dakota Rental in Jamestown the following morning. I did not expect what would come next because of apparent willful ignorance on behalf of VCPW or the contracted utility marking company.

Upon drilling to depth the second hole, I was retracting the auger and my wife and daughter were next to the hole with shovels removing the dirt coming out of the hole. All of a sudden we heard 3 loud pops. I immediately stopped the auger and asked if they knew what the noise was from. As I cautiously reengaged in the Dingo controls and lifted the auger out of the hole a plume of smoke exited the hole and once it cleared we could see a couple wires with nicked up insulation. We later found out it was the power line for the neighbors house on my daughters property. We immediately reported the issue of which VCPD dispatched an officer to check on our safety. Once he found out everyone was safe

and chatted a bit, he left. Shortly after the first Linemen showed up. He assessed the situation and left to retrieve a different truck. Immediately upon his return he told myself, my daughter and my wife that this was not our responsibility because her yard was flagged "ALL CLEAR" as well as her NDOC Ticket #24068296 was given a status of "CLEAR/NO CONFLICT". He said someone messed up!

After all this I struggle to understand how VCPW would bill a customer who did all the right things. The ticket Ashley submitted clearly states the area we would be working in the Location Description as well on sheet 2 outlined in the map. The responding Linemen stated it was not our fault. The responding Officer even said the same thing happened a few weeks ago to him (in Valley City). He was given the "ALL CLEAR" and cut a line himself putting in a fence.

It seems there is a systemic problem with identifying and marking hazards in Valley City. What would your response be if the breakage would have been more severe and my daughter, my wife or myself would have been injured?

Originally, I was hesitant to submit an invoice to VCPW but given your response with an invoice and a \$870.36 bill this is my formal request for you to reimburse myself the difference of the rental which should have been 1 day at \$177.48 instead of a weekend rental totaling \$354.96. With that I am asking VCPW to provide payment to me in the full amount of \$177.48 to cover the extended rental. This payment can be sent to the following address:

Dan Tostenson

1103 13th Ave SW

Jamestown, ND 58401

Please let me know if this letter should be addressed to anyone else or who I should be in contact with. I am including supporting documents for your reference. This could have been a very bad day for my family. It is hard to believe that someone given the responsibility of marking power lines does not take their job serious. If it is an employee of VCPW or a contractor of VCPW I would expect some course of action to occur.

I look forward to resolving this issue quickly.

Regards

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From: Daniel Tostenson <dtostens@yahoo.com>
Sent: Tuesday, August 20, 2024 20:24
To: Crockford, Konrad S.
Cc: Ashley Tostenson
Subject: Re: INV00768 (NDOC Ticket # 24068296)
Attachments: NDOC Complaint Tostenson.pdf

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Konrad,

Thank you for the quick response, please find attached the ND One-Call Complaint form. To keep you in the loop, VCPW has not contacted me or my daughter yet. Let me know if you need anything else from us.

Dan Tostenson
701-658-0451

On Tuesday, August 20, 2024 at 01:26:17 PM CDT, Crockford, Konrad S. <kcrockford@nd.gov> wrote:

Good Afternoon Dan,

Thank you for reaching out to the PSC. I can understand your concern and how scary a situation can be striking underground utilities.

To open a case and investigation, I request you complete and file a ND One-Call Complaint form. This provides us all the pertinent information upfront and aids our investigation. The form is available here: <https://www.psc.nd.gov/forms/Damage%20Prevention/ND-one-call-complaint-form-fillable.pdf>.

You may submit the form directly to me by replying to this email.

I have your previous email and four attachments so you do not need to submit those again.

If you have any questions, please contact me.

Konrad Crockford

Director, Compliance Division

Weights & Measures • Railroad Safety • Pipeline Safety

Damage Prevention & Enforcement • Risk Management

701.328.4097 • kcrockford@nd.gov • www.psc.nd.gov



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This transmission, email and any files transmitted with it, may be: (1) subject to the Attorney-Client Privilege, (2) an attorney work product, or (3) strictly confidential under federal or state law. If you are not the intended recipient of this message, you may not use, disclose, print, copy or disseminate this information. If you have received this transmission in error, notify the sender (only) and delete the message. This message may also be subject to disclosure under the North Dakota Open Records Laws.



North Dakota One Call

Ticket number 24068296 **Type** LOG ROUTINE ITIC2.0
Original call date 06/19/24 03:31 pm
Work to begin date 06/22/24 12:01 am
Expiration date 07/13/24 12:01 am

Excavator information

Excavation company ASHLEY TOSTENSON **Type** HOMEOWNER
Address 645 2ND ST NE **Fax**
 VALLEY CITY, ND 58072
Caller ASHLEY TOSTENSON **Caller phone** 701-251-8594
Alt contact name ASHLEY TOSTENSON **Alt contact phone** 701-251-8594
Email ashley.tostenon@gmail.com

Excavation information

Purpose of excavation FENCE
Work done for ASHLEY TOSTENSON
Explosives N **Depth** 3FT
Tunneling or boring N **White lining/site identification** WHITE MARKING

Location information

County BARNES **City/place** VALLEY CITY
Address/street 645 2ND ST NE **City limits** Y
Nearest intersecting street 7TH AVE NE
Location description BACKYARD, NORTH OF GARAGE BETWEEN WHITE SHED (WEST) AND YELLOW SHED (EAST)

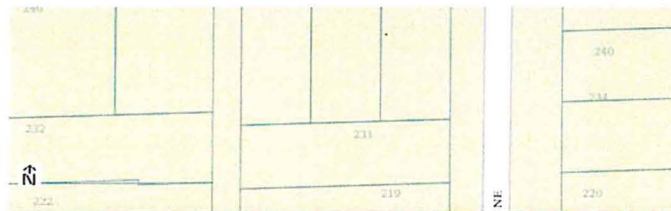
Additional information

Map Twp 140N **Rng** 58W **Sect-qr** 22-SW
NW Lat 46.9247954 **Lon** -97.9943508 **SE Lat** 46.9243618 **Lon** -97.9940950

Members notified

Company name	District	Marking concerns	Status
BEK COMMUNICATIONS	ACAM01	701-475-1230	Clear/No conflict
BEK COMMUNICATIONS CO-OP	BCE01	701-475-1230	Clear/No conflict
CABLE SERVICES, INC.	CABLE02	701-252-2225	Clear/No conflict (BL-NT)
MONTANA DAKOTA UTILITIES CO	MDU22	888-728-9343	Clear/No conflict
MIDCONTINENT CABLE	MIDCON48	605-271-0202	Clear/No conflict
CITY OF VALLEY PUBLIC WORKS	VALLEY01	701-845-4255	Clear/No conflict

Map



Download complete
generateTicketPDFView

OPEN IN... X



5





Tunneling or boring N White lining/site identification WHITE MARKING

2 of 2

BARNES City/place VALLEY CITY
645 2ND ST NE City limits Y

Nearest intersecting street 7TH AVE NE

Location description BACKYARD, NORTH OF GARAGE BETWEEN WHITE SHED (WEST) AND YELLOW SHED (EAST)

Additional Information

Map Twp 140N Rng 58W Sect-qr 22-SW
NW Lat 46.9247954 Lon -97.9943508 SE Lat 46.9243618 Lon -97.9940650

Members notified

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BEK COMMUNICATIONS CO-OP	BCE01	701-475-1230	Clear/No conflict
CABLE SERVICES, INC	CABLE02	701-252-2225	Clear/No conflict (BL/NT)
MONTANA DAKOTA UTILITIES CO	MDU22	888-726-9343	Clear/No conflict
MIDCONTINENT CABLE	MIDCON48	605-271-0202	Clear/No conflict
CITY OF VALLEY PUBLIC WORKS	VALLEY01	701-845-4255	Clear/No conflict

Map



Download complete generateTicketPDFView

OPEN IN...



Dakota Rental
 1924 9th Avenue South West
 Jamestown, ND 58401
 (701) 252-7600

1-544716	
Closed Order	
Rent Date:	8/9/2024 11:26 AM
Due Date:	8/9/2024 1:26 PM
Return Date:	8/11/2024 12:26 PM
Order Terms:	Net 30
PO #:	
Job #:	

Customer Information
 Tostenson, Dan
 1103 13th Ave SW
 Jamestown, ND 58401

Ship VIA	Customer Drivers License	Work Phone #	Fax Phone #
		(701) 658-0451	

Customer #	Authorized Contact Name	Contact Phone #	Sales Person Name	Employee Name
5889				1

Description	Qty Out	Qty In	Minimum	Daily	Week	Per Unit	Taxable	Extended
Dingo / Walk behind TX525 Diesel Item ID: 2328 Rent Date: 8/9/2024 11:26 AM Serial: 314000359 Fuel Charges: 0.000 @ \$4.29 Return Date: 8/11/2024 12:26 PM	1	1	<<-- Rental -->> \$75.00	\$130.00	\$390.00	\$195.00	<input checked="" type="checkbox"/>	\$195.00
Toro Model #22802 Auger Powerhead f Item ID: 2304 Rent Date: 8/9/2024 11:26 AM Return Date: 8/11/2024 12:26 PM	1	1	<<-- Rental -->> \$40.00	\$60.00	\$180.00	\$90.00	<input checked="" type="checkbox"/>	\$90.00
Trailer 10' Utility FT3 3000# GVR Item ID: 2113 Rent Date: 8/9/2024 11:26 AM Serial: SFTUN1210B1036594 Return Date: 8/11/2024 12:26 PM	1	1	<<-- Rental -->> \$25.00	\$50.00	\$150.00	\$25.00	<input checked="" type="checkbox"/>	\$25.00

Order Terms:

Notice: Failure, refusal or neglect to return the rental property within 72 hours after the agreed rental period has expired or the presenting of false, fictitious, or misleading identification to the dealer shall be prima facie evidence of an intention to commit larceny. I have read and I agree to the contract terms on the back of this writing. There are no oral or other presentations not included herein. Interest shall accrue on all past due accounts at the rate of 1 1/2 % per month. I acknowledge receipt of a copy of this contract.

Customer Signature

[Signature]
 Customer Signature
 DANIEL TOSTENSON
 Customer Name (Printed)
 8/14/24
 Date

HOURS:
 Monday - Friday 8:00am - 5:00pm
 Saturday 8:00am - 12:00pm
 Closed Sundays



Rental Charges:	\$310.00
Damage Waiver:	\$21.70
Sub Total:	\$331.70
Tax:	\$23.26
Order Total:	\$354.96
Amount Paid:	\$354.96
Amount Due:	\$0.00

Transaction History:				
Date	Type	Amount	Kind	Number
8/14/2024	VISAMC	\$354.96	Payment	4059

Thank You For Your Business!
 Printed: Wednesday, August 14, 2024 12:28 PM

Valley City
Public Works
 Serving Valley City Since 1882
 254 2nd Ave NE
 Valley City, ND 58072
 Phone: 701-845-8131

ACCOUNT STATEMENT

DATE: 8/16/2024
 DUE DATE: 8/30/2024
 TOTAL DUE: \$870.36

Billed To:
 Ashley Tostenson
 645 2nd St NE
 Valley City, ND 58072

CUSTOMER ACCOUNT # : 8467

Type	Number	Due	Description	Amount	Payments	Balance
1	INV00768	8/30/2024	dug through underground service out of dig window	870.36	0.00	870.36

30-60	60-90	90-120	>120	Unapplied Credits	Balance
0.00	0.00	0.00	0.00	0.00	870.36

Valley City Public Works
 254 2nd Ave NE
 Valley City, ND 58072
 Return this portion with your remittance. Thank you

Customer Number: 8467
 Total Due: 870.36
 DUE DATE: 8/16/2024

Valley City
Public Works
 Serving Valley City Since 1882
 254 2nd Ave NE
 Valley City, ND 58072
 Phone: 701-845-8131

INVOICE

DATE: 8/16/2024
 INVOICE #: INV00768
 DUE DATE: 8/30/2024
 TOTAL DUE: 870.36

Billed To:
 Ashley Tostenson
 645 2nd St NE
 Valley City, ND 58072

CUSTOMER ACCOUNT # : 8467

ITEM DESCRIPTION	UNITS	PRICE	TAX	AMOUNT
ELEC DEPT LABOR HR OT	6.00	120.00	0.00	720.00
TRUCK 14	2.00	45.00	0.00	90.00
FITTING, COMPRESSION 4/O THRU 2	6.00	3.01	1.35	19.41
INSULATOR, HEAT SHRINKING WIRE, 2-4/O - 1-2/O TRIPLEX TYPE US	6.00	3.81	1.71	24.57
	6.00	2.54	1.14	16.38
TOTAL THIS INVOICE				870.36

REMIT TO:

Valley City Public Works
 254 2nd Ave NE
 Valley City, ND 58072

A copy of this invoice should accompany your check. Thank you!