



MONTANA-DAKOTA

UTILITIES CO.

A Division of MDU Resources Group, Inc.

718 Steele Ave.

P.O. Box 1060

Rapid City, SD 57709-1060

October 29, 2003

Mr. Larry Englerth
South Dakota One Call
1012 N Sycamore Ave
Sioux Falls, SD 57110

RE: Complaint Against Jerry Ogan

Dear Larry:

Enclosed is our complaint against Jerry Ogan of Pierre. Along with the complaint, we have included copies of the year old locate ticket Mr. Ogan was using as well as a small incident report to Martin Bettmann of the PUC and a company damage report. Written statements from Scott Gannaway, Dan Stover, and Doyle Heying are also enclosed. Scott is the MDU District Manager for Pierre and Dan and Doyle are employees in Pierre.

Please let me know if you have any questions or require additional information. Your help in this matter has been greatly appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Jim Mann'.

Jim Mann
Region Gas Superintendent

cc: Larry Thompson – Rapid City
Scott Gannaway – Pierre
Bruce Nelson – Bismarck G.O.
File

Mail completed form to:

PUBLIC UTILITIES COMMISSION
500 EAST CAPITOL AVENUE
PIERRE, SD 57501
ATTN: SOUTH DAKOTA ONE CALL BOARD

OC03-012

COMPLAINT

COMPLETE INFORMATION IS REQUIRED – ADDITIONAL PAGES MAY BE USED IF REQUIRED

ALLEGATION OF PROBABLE VIOLATION(S) OF SOUTH DAKOTA ONE CALL LAWS

I. ACTION REQUESTED BY:

COMPLAINT FILED BY INDIVIDUAL OR BUSINESS* PERSON FILING COMPLAINT Jim Mann

COMPANY Montana-Dakota Utilities Co ADDRESS PO Box 1060, Rapid City, SD 57701 PHONE NUMBER 605-355-4021

SIGNATURE OF COMPLAINANT: Jim Mann DATE: 10/15/03 EMAIL ADDRESS: jim.mann@mdu.com

*If the complaint is files on behalf of a Company, the person signing this form should have the proper authority to file the complaint.

II. ACTION REQUESTED AGAINST:

NAME OF EXCAVATOR/FACILITY OPERATOR: Jerry Ogan PHONE NUMBER: 605-222-2768

ADDRESS: 1808 Flag Mountain Dr, Pierre, SD 57501

WAS A LOCATE REQUESTED FROM SD ONE CALL? YES NO LOCATE TICKET #: N/A

START DATE ON TICKET: N/A

DID EXCAVATOR WAIT UNTIL THE START DATE/TIME ON THE TICKET BEFORE COMMENCING EXCAVATION? YES NO

WERE BURIED FACILITIES EXPOSED BY HAND OR WITH NON-INVASIVE EQUIPMENT PRIOR TO EXCAVATION? YES NO

III. FACILITY INVOLVED (IF ANY)

TYPE OF FACILITY INVOLVED: Natural Gas Distribution Line OPERATOR OF FACILITY: Montana Dakota Utilities

OPERATOR ADDRESS: PO Box 1060, Rapid City, SD 57709 PHONE NUMBER: 605-355-4021

DEPTH OF COVER: 36" PRESSURE: 20 psi VOLTAGE: N/A NUMBER OF CABLE PAIRS: N/A

IV. MARKING

WERE FACILITIES MARKED? YES NO No locate was requested

WAS THE MARKING COMPLETE PRIOR TO THE START TIME ON THE TICKET? YES NO N/A

DID EXCAVATOR PRE-MARK WITH WHITE PAINT? YES NO N/A

WAS THE FACILITY MARKED ACCURATELY (WITHIN 18 INCHES)? YES NO N/A

DID EXCAVATOR USE REASONABLE CARE TO MAINTAIN MARKINGS FOR LIFE OF PROJECT? YES NO N/A

HAVE YOU DISCUSSED THE PREVIOUS STATEMENTS WITH THE OTHER PARTY? YES NO

IS THERE AGREEMENT? YES NO

IF NO, PLEASE EXPLAIN: The parties do agree that the facility was not marked and that the only ticket for this work is approximately one year old.

V. DAMAGE (IF ANY)

FATALITIES: 0 INJURIES: 0 LENGTH OF HOSPITALIZATION: N/A

ESTIMATED PROPERTY DAMAGE (\$): \$1,408.64 NUMBER OF CUSTOMERS AFFECTED: 16

DAMAGED IN: PUBLIC PRIVATE (RIGHT-OF-WAY)PHOTOS OF THE DAMAGED FACILITY? YES NO **ADDITIONAL INFORMATION:**

Enclosed with this complaint is a copy of the year old locate ticket provided by Mr. Ogan as well as a Small Incident Report file with Mr. Martin Bettmann of the South Dakota PUC and a company damage report. Also enclosed are written statements from Scott Gannaway, Dan Stover and Doyle Heying of MDU.

VI. PROBABLE VIOLATION**SPECIFIC STATUTE(S) OR RULE(S) THAT WAS VIOLATED:**

49-7A-5 Notification of Proposed Excavation

49-7A-12 Notification of Damage to Underground Facility

ADDRESS/LOCATION OF PROBABLE VIOLATION: Approximately 800' west of Browning Rd on Range Rd, Pierre, SD**DATE/TIME OF PROBABLE VIOLATION:** Approximately 3:30 PM 7/17/03. MDU was notified approximately 8:30 AM 7/18/03**HAVE YOU DISCUSSED ALLEGED VIOLATION WITH THE PARTY THE ACTION IS FILED AGAINST:** YES NO **IF YES, NAME OF THE PARTY WITH WHOM YOU DISCUSSED THE PROBABLE VIOLATION:** Jerry Ogan**DESCRIPTION OF ALLEGED VIOLATION:**

An employee of Jerry Ogan was operating a scraper on Range Rd north of Pierre on 7/17/03. The scraper work was being done to remove a ridge in the ditch area of the road right-of way. He severed a 2" plastic natural gas distribution line and caused an outage for 16 customers. Montana-Dakota Utilities was not notified of the problem until the next morning when customers started calling in stating they had no hot water. Our crews investigated and found a section of 2" line that had been hit with a scraper and was actually sticking out of the ground. Gas was still blowing. The scraper operator had hit the line and left it to blow. He made no effort to contact Montana-Dakota Utilities, SD One Call, or any other organization.

On the morning of July 18th, after receiving several no-gas calls from customers, MDU discovered the problem and initiated repairs. What they found was damage due to the scraper. Approximately 10 feet of 2" plastic pipe was laying on the ground in the damage area and gas was blowing from the open-ended main. Service to the 16 affected customers was restored that morning. The line had been blowing all night so the cost of the repairs, relight and lost gas came to \$1,408.64.

Scott Gannaway, the Pierre District Manager for MDU, called Jerry Ogan on 7/18/03 to get his side of the story. Jerry admitted he had been working at this location and said he had a locate ticket through SD One Call. During a second conversation between Scott Gannaway and Jerry Ogan, Jerry produced a locate ticket dated 8/2/02. Scott informed him the ticket was a year old and he replied "I know but your people had told me at the time how deep the line would be"

A bill was sent to Jerry Ogan for the damage and he now refuses to pay.

This is not the 1st incident we have had with Mr. Ogan. This same line was hit during mid October of last year by Mr. Ogan as well. Last year, the locate marks were off by slightly more than the 18" SD One Call requirements so no damage was billed. However, no effort had been made to hand dig and expose the facilities last year either. We feel even though the locate marks were off, the excavation was reckless. On 4/23/02, Mr. Ogan damaged one of our service lines at 413 S Pawnee in Pierre while excavating with no locate ticket. He refused to admit liability for this damage as well and did not pay the bill for the damage.

We feel that any time an excavation is done near our facilities, a locate ticket should be requested by the excavator. Mr. Ogan has performed reckless excavations in violation of SD One Call law around our facilities on several occasions. His refusal to pay or admit any wrong doing concern us that these incidents are going to continue to happen. Recklessness while excavating near natural gas facilities not only causes service interruptions to our customers, they also constitute an extreme safety hazard to the excavator as well as the public. Montana-Dakota Utilities Co. would like the Board to consider maximum penalties for this action.

We feel that he violated Statute 49-7A-5 by failing to contact SD One Call prior to excavating. We feel he violated Statute 49-7A-10 by failing to act in a careful and prudent manner. We feel that he violated Statute 49-7A-12 by failing to notify MDU or SD One Call after damaging the facilities.

REPORT OF DAMAGE TO COMPANY-OWNED PROPERTY

(NOTE: Please refer to bottom of this form before proceeding with completion.)

Part A

Owner of Property: Montana-Dakota Utilities Division/District: Pierre
Date and Time of Loss: 8:30 AM 18 July 2003
Name of Location Where Damage Occurred: approximately 1/4 mile east of pheasant run entrance on Range Rd.
Location of Damaged Property: Range Rd Pierre SD
Rural Location: yes
Estimated Amount of Loss: unknown Our Service Order No. (If applicable):
Description and Cause of Loss or Damage: 2"plastic main cut by scrapper

Part B

Did Loss or Damage Originate on our Premises? Yes No If No, Explain COUNTY ROW
If an Explosion, did a Fire Ensur? Yes No How was Fire Extinguished?
If Electrical Property is Involved, Fill in the Following Supplemental Data:
Type of Equipment Involved:
Damage caused by Electrical Arcing, Short Circuit or Other Failure, Give Approximate Cause:
Did Fire Ensur? Yes No

Part C

If damage was caused by excavation, was location of our facilities requested prior to digging? Yes No
Location requested by: NONE Time: Date:
Company property located on: Private Property Public
Damage notification by: Customer call with w/h pilot outage Time: 8:30 AM Date: 7/18/2003
Was damager a subcontractor: Yes No If yes, for whom
Address: Telephone #:
Name of equipment operator: Unknown Address: n/a
Type of equipment: scrapper Owner: Jerry Ogan
Others involved in property damage: Owner Address: 1808 Flag Mtn. Dr.
Name: Address: Pierre, SD. 57501
Name: Address:
In case of line break, complete the following: Size of hole: 2" Time line blew: 3:30-6pm to 9:30 am
Names of Witnesses: Address:
Name of Insurer: Address:

Part D

Names of Persons Injured: Address: Extent of Injury:

Signature: Scott Gannaway Signature: Dan Stover
Date: 7/21/2003 Date: 7/21/2003

Send one copy to the Treasury Services Dept (GO) and one copy to Legal Dept (GO)

MONTANA-DAKOTA UTILITIES CO.
GAS LEAK AND REPAIR REPORT
(Or Pipeline Condition Report)

Reason For Report: Inspection Leak and Repair

Division: Black Hills Town: Pierre 553 Date: 7/18/03

If Leak, Date Detected: _____ By Whom: _____

Leak Classification: Class I Class II Class III

Date Leak Repair Person was Dispatched: 7/18/2003 Time: 830AM

Date Leak Repair Person Responded: 7/18/2003 Time: 830AM

From What Location (Town) did Leak Respond Person Leave: PIERRE

Type of Line: Rural Service Line Distribution Main Service Line

Location: Map Number 15 - 13 Block Number: _____ Lot Number: _____

If Rural Service Line: _____ Transmission Line Number: _____ Line Name: _____

Survey Location: _____ Acct Number: 321732.01 On Federal Land: Yes No

Describe Specific Location: MAIN WAS CUT 3696' EAST OF PHEASANT RUN ENTRANCE

Internal Pipe Condition: Good

Pipe Size: 2-in Depth: 38"

Length Exposed: 40'

External Condition: Good

Coating Type: Not Applicable

Type of Pipe: Plastic If steel is it cathodiacaally protected: Yes No Pipe/Wire to Soil 1.10

Soil Conditions: Gravel Sand Sil Clay _____ Other Moisture Dry Damp Wet

Original Installation Date: 1999 / 2000 Operating Pressure: 20PSIG

Kinds of Leak: Corrosion Material Defect Construction Defect Third Party Outside Force Other

Description of Leak: SCRAPPER WAS CUTTING DOWN HILL, CUT 2" MAIN IN TWO. NO LOCATES HAD BEEN CALLED IN.

Method of Repair: ELECTRO FUSION

Date Repaired: 7/18/2003 S.O.: _____ Date of follow up (if required) _____

If a DOT Reportable Leak: _____ Date and Time of Telephone report: 7-18-03, APPRX. 900AM

To whom was leak reported: _____

Remarks:

PUC, MARTIN BETTMAN (Gas Loss = 88 Mcf Jim Mann 8/5/03)

Signed: DAN STOVER

Signed: Jim Mann 8/5/03

South Dakota One Call

SEQUENCE NUMBER 0004 CDC = TST

Type: *** ROUTINE

*** Class: TRANSMIT

Transmit: 09/04/03

At: 1347 COT

Prepared: 26-AUG-02

Time: 1112 COT By: FBV

Ticket No.: 022380291

Operators Notified:

SDN=/SD NETWORK / OAH=/DAHE ELECTIC / UWS=/QWEST LOCAL-ULS/
MDR=/MID-DAKOTA WTR / MT2=/MDU-PIERRE-ONE /

Excavator Information:

Caller: JERRY OGAN Phone: 605-962-6245

Excavator: OGAN TRUCKING & CONSTRUCTION
Address: BOX 221
City: BLUNT, SD 57522
Phone: 605-962-6245 Fax: 605-962-6284

Contact: JERRY OGAN Phone: 605-962-6245
Alt. Contact: PAUL PARSONS Phone: 605-962-6245

Location Information:

County: HUGHES City/Village: PIERRE City Limits?: N

Map Ref: 44242-100186 Grids: 9

Exc. Site Address: 0 RANGE RD

Nearest Intersection: 1804

Type of Work: RD BLDG

Work Being Done For: DAVE WORD

Depth: 4FT

Explosives: N

Tunnel/Bore: N

Start Date: 08/28/02

Time: 1105 COT

Duration: 3 DAYS

Mailing Required: N

Best time to Contact: 0800 - 0900

Exc. Site (Marking Instr.): R.D.W.: Y IRSQ: 11N 79W 22-NE

SITE STARTS APPX 1/2MI E OF ABOVE INTER AND GOES 1/2MI TO THE
E. CALLER IS EXTENDING RD. STARTING AT THE W END OF THE RD. RD
IS GRAVEL THEN TURNS INTO FARM GROUND.

Remarks:

End Ticket

| | | | | | |
|-------------------|---------|---------|---------|------------|---|
| Post-It® Fax Note | 7671 | Date | 9/15/03 | # of pages | ▶ |
| To | Jim Mow | From | Scott | | |
| Co./Dept. | | Co. | | | |
| Phone # | | Phone # | | | |
| Fax # | | Fax # | | | |

SMALL INCIDENT REPORT FORM

COMPANY Montana-Dakota Utilities Co.

ADDRESS PO Box 1060, Rapid City, SD 57709

PHONE 605-342-0160 TYPE OF OPERATOR LDC

DATE OF LAST INSPECTION Apr-03

LOCATION OF INCIDENT Range Road, Pierre, SD DATE 7/18/2003

TIME INCIDENT OCCURRED 7/17/2003 3:30 PM TIME CO. REC'D NOTICE 7/18/2003 8:30 AM

WHO RECEIVED NOTICE Doyle Heying

HOW WAS NOTICE RECEIVED Customer called about no hot water

WHAT ACTION(S) WAS

TAKEN Investigated lack of gas, determined system problem, located damaged section, squeezed of main, replaced approximately 20' of damaged 2" (p) pipe, shut off meters, purged line, started relighting. Line was squeezed off at 9:30 AM

NAMES OF EMPLOYEES DISPATCHED AND TIME OF

ARRIVAL Doyle Heying 8:30 AM, Dan Stover 8:45 AM, Eric Lebida 8:45 AM, Darwin Heying 9:30 AM

CHECK ANY OF THE FOLLOWING WHICH OCCURRED: N/A

FIRE _____ EXPLOSION _____
INJURIES _____ FATALITIES _____

DESCRIBE SUSPECTED

CAUSE Scraper was removing dirt in area and hit 2" (p) main. Line was completely severed.

PIPELINE INFORMATION

YEAR INSTALLED 2000 DIAMETER 2"

WALL THICKNESS SDR 11 GRADE PE2406

OPERATING PRESSURE 20 psi MAOP 60 psi

CLASS LOCATION 2

TRANSMISSION _____

DISTRIBUTION X

SERVICE _____

NUMBER OF CUSTOMERS AFFECTED 16

DURATION OF OUTAGE 18 Hours

DESCRIBE DAMAGE TO SYSTEM AND OTHER PROPERTIES (ATTACH ADDITIONAL SHEETS
IF NECESSARY) Scraper severed the 2" (p) main interrupting service to 16 customers. It is not clear if the scraper operator
knew he hit the line but it was not reported until the next morning. Line locates had not been requested.
Service was restored to the bulk of the customers by 2:00 PM. We are still waiting for call-backs from 5 of the customers.

WEATHER CONDITIONS Foggy, 75 degrees, calm

LAST LEAKAGE SURVEY IN FAILURE AREA 2001

WAS GAS ODOR PRESENT BEFORE INCIDENT NO

IF APPLICABLE, STATEMENTS FROM GAS COMPANY EMPLOYEES WHO WERE AT THIS ADDRESS
PRIOR TO OR AT TIME OF INCIDENT N/A

ATTACH ANY PERTINENT WITNESS STATEMENTS

N/A

NAMES OF TELEVISION STATIONS, RADIO STATIONS, AND REPORTERS WHO WERE PRESENT IF
APPLICABLE N/A

ATTACH ALL PHOTOGRAPHS TO THE END OF THIS FORM

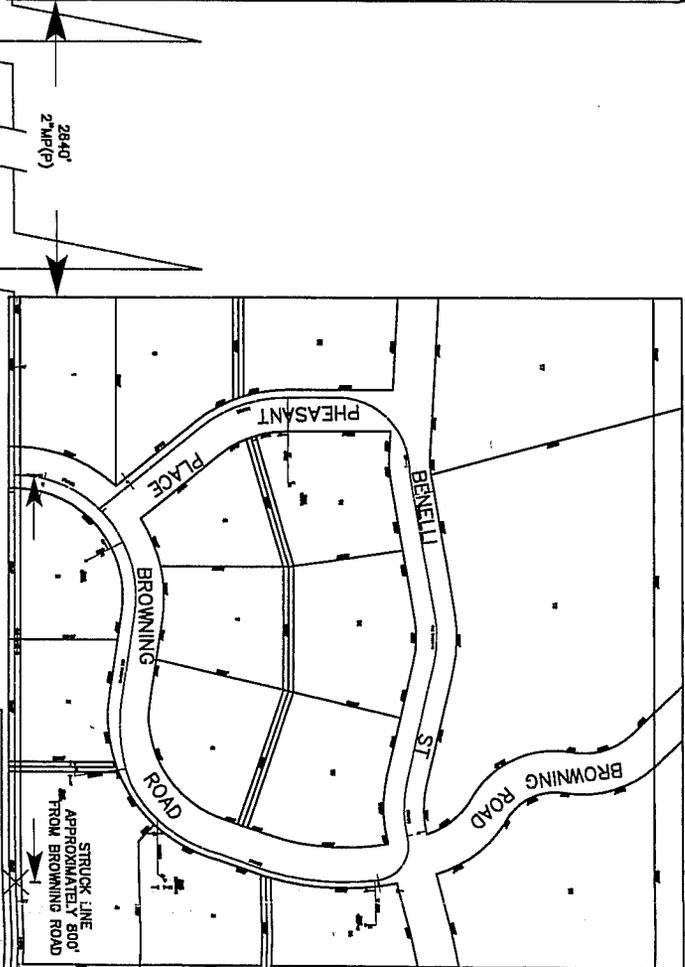
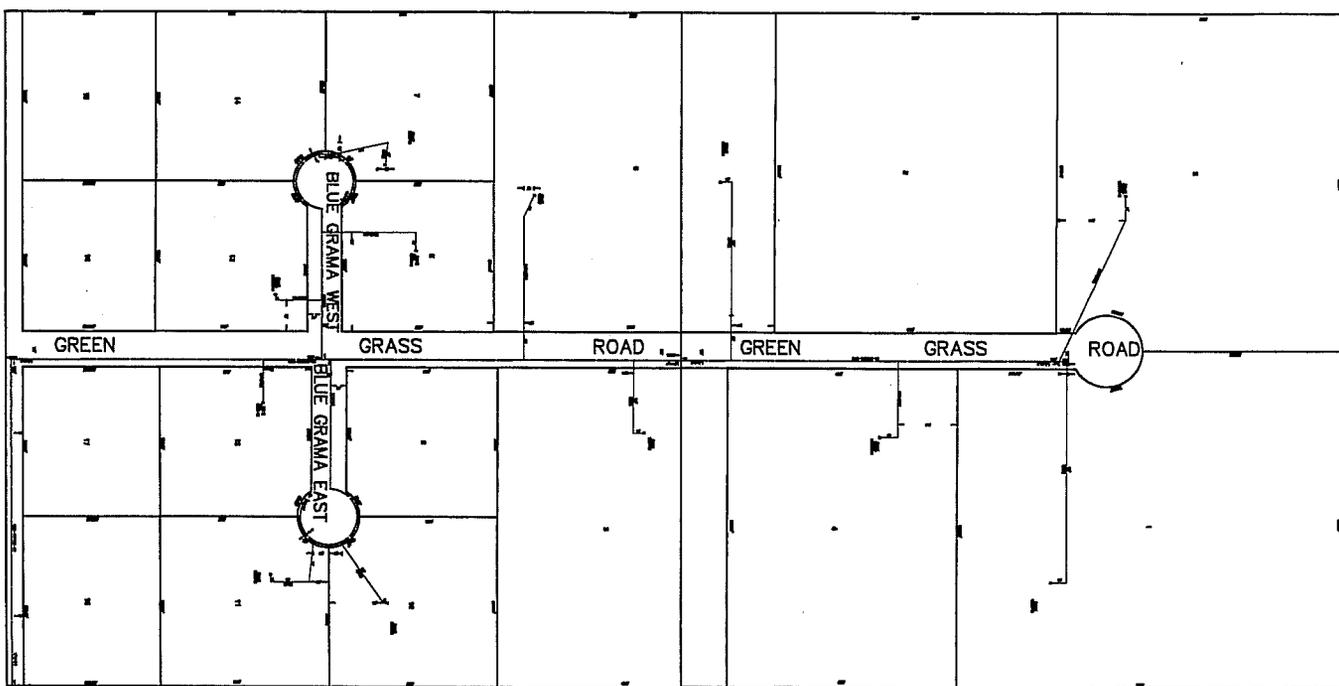
N/A

DRAW A SIMPLE DIAGRAM OF THE ENTIRE INCIDENT SCENE

See attached drawing

INSPECTOR'S SIGNATURE Jim Mann

DATE SIGNED 7/18/2003



2840'
2 MP(P)

| | | | |
|------------------------------|-------|---------|----------|
| MONTANA-DAKOTA UTILITIES CO. | | | |
| RANGE ROAD LINE STRUCK | | | |
| PIERRE, SD | | | |
| SCALE | DR-BY | TR-BY | TOWNSHIP |
| RR | TR | 7-18-03 | 111N |
| | | | RANGE |
| | | | 72W |

Cut Line incident on Range Road 7-18-03

Around 8 am on 7-18-03, Doyle Heying was checking his orders for the day and noticed that he had a couple of no hot water calls in the Green Grass area. He mentioned this to me and said it sounded strange to have several of these calls at once and so he was going to go there first thing and check it out.

About 9 am he called me and informed me that there was no gas to the premise that he was at and so he was going to head down the main to see if he could find out if there were any problems. He called me back a short while later and said he had found where the main had been cut and it was blowing gas and asked me to call Dan for assistance and also to let Jim Mann know we had an incident. I called Dan Stover who was working in the Green Grass area putting in service lines and he with his helper headed over to the location on range road where Doyle had found the cut. They proceeded to handle the situation. I also called Darwin Heying who was reading meters and asked him to report to the area as we had to shut off all the downstream risers and asked him to do this. He proceeded as asked. I also called Jim Mann and informed him of the problem. I went up to the site and it was very evident where the cut was from the blowing gas. There was also a section of gas piping that had been ripped out of the ground laying about 50 feet to the sw of the cut. Repairs to the line were made and completed by early afternoon. Sandy Smith and I attempted to call all of the affected customers to explain the situation to them. We then went around to all the customers who were shut off and attempted to restore their gas service. Most of the customers were back on gas by 5pm. There were however several who we were not able to contact as they were out of town or just unavailable. These were handled by the service tech on call that weekend as the customer would call us when they got home. We had called all customers and left messages with those not home that their gas had been shut off due to a cut line. We did several of these re-lites on overtime.

I do not recall exactly if it was later that day or the next that I called Jerry Ogan after we had found out that he might have been working in that area. I told him we had a cut line there and that we figured it was cut around 3-4 pm the afternoon of the 17th and I asked if he had been working in the area. He told me he had sent his man over to that area around 6 pm on the 17th to remove the top of a ridge. A neighbor in the area had indicated to us that he had seen a euck working on the ridge around 5 pm. Mr. Ogan indicated that they could not have hit anything since they were only removing a small portion of dirt. I told him we had not received any locate request and that we would be figuring a bill for the damages and sending it to him. That was the end of our conversation.

The next time that I remember talking to Mr. Ogan was several weeks later when I called him with the damage amount. He told me then that he had a locate ticket and that he should not be responsible because it had been located and that one of our employees had told him how deep our line was and that he had not gone that deep. He indicated that they were just taking the top of a ridge off. I asked him for the locate ticket number and he told me he would call me back with it. I told him that we had not received a request to locate the area prior to his digging. I also told him that if we had failed to locate it we

would not bill him. He called me back a little later with a ticket number. The ticket was #022380921. I told him it was almost a year old and that it was no longer valid. He disagreed with me on the premise that nothing had changed in a year and it should have been ok to dig under this old ticket. I told him he owed us the money and then he informed me that he was not going to pay and that he would turn it over to his attorney. At that time I told him that was his option but that we wanted payment and we were going to bill him for what he owed us. At the point he hung up on me and I have not visited with him since.

A handwritten signature in black ink, appearing to read "Scott Gannaway". The signature is written in a cursive style with a large, sweeping initial "S".

Scott Gannaway

In early October 2002, I received a call from Jerry Ogan stating he had hit a gas line on Range Rd. After responding to that location, I found that his operator had cut our 2" main in two. The locate was about 24" off. No effort was made to spot the main. After proper notification, we made the necessary repairs and relights. Jerry said they were cutting down the hillside to match the road grade. At that point, I told Jerry that we would lower approximately 100' of main. He showed me where he was going to finish his cuts. We lowered the main to about 6' where he was making the final cut. After we lowered it, that left about a 3-4' ridge where our main was. The job was not completed until the incident this summer, on 7-17-03. I was notified by Doyle the following morning that we did not have any gas to this area. Doyle found the site and called me. We happened to be working within a mile of this same area. After all the repairs, we found about 20 to 25 feet of pipe that had been cut by a scraper. Martin Bettman witnessed this. Where the line was cut was approximately 20' east of where I was told they would be cutting. At the cut area the main would have been 36" deep. The cut area was north of Range Rd. approximately 40-50'.



Dan Stover

At approximately 7:45 a.m. on July 18, 2003, I was reviewing my daily orders and saw that three customers in the same neighborhood had called and reported they had no hot water. One or two customers had also remarked that they had no gas. I thought that it was strange to have such a situation unless the 2" main feeding that neighborhood was damaged or cut.

I went directly to the first call and checked the service riser for pressure. They had no pressure. I saw Dan and the construction crew near my location, so I stopped and advised Dan of the situation. He asked me to begin patrolling the main line and call in if I found something. At approximately 8:45 a.m., I saw a 10' piece of 2" gas pipe laying on top of the ground in the Range Road right-of-way. I called Scott and advised him to call Dan.

Approximately 45' away, I saw dirt blowing and smelled the presence of gas. It appeared that someone had recently cut dirt from this area and hit a gas main. I secured the area until Dan and Darwin arrived. We assisted Dan in stopping the flow of gas and began the repair process. Darwin was sent to shut off all meters downstream of the hit line.

A handwritten signature in black ink, appearing to read 'Doyle Heying', with a long horizontal flourish extending to the right.

Doyle Heying