

Safe digging is no accident. Always call 811 before digging.



**Know what's below.
Call before you dig.**



Larry Englerth
Executive Director

1012 North Sycamore Ave.
Sioux Falls, SD 57110

Tel/Fax (605) 339-0529
Email: exedir@sdonecall.com

TO: EMPIRE CONSTRUCTION
FROM: SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
DATE: JUNE 12, 2008
RE: NOTICE OF COMPLAINT; DEADLINE FOR ANSWER;

In the Matter of the Complaint OC08-002 filed by Southeastern Electric Cooperative, Inc. against the Empire Construction, regarding a failure to provide notification of proposed excavation as required by SDCL 49-7A-5.

You are hereby notified that the enclosed complaint as referenced above has been filed with the South Dakota One Call Notification Board against the Empire Construction. Pursuant to SDCL 49-7A-23 & SDCL 49-7A-24, you are required to answer this complaint in writing, no later than the close of business on July 3, 2008, by filing the original and two copies of the answer at the address listed below and by serving a copy on the complainant or you may file your response electronically at <http://www.state.sd.us/puc/EFilingOptions.aspx>.

South Dakota One Call Notification Board
c/o Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

Your answer should be as thorough and detailed as possible and should include any documentation that supports your position e.g. witness statements, pictures, etc. We would encourage you to specifically address the alleged violation of SDCL 49-7A-5 referenced in the complaint:

Failure to provide advance notification to the South Dakota One Call Notification Center prior to commencing excavation at 7313 W 65th Street in Sioux Falls, SD.

Pursuant to SDCL 49-7A-22 a panel of Board members will make a determination of probable cause based on the complaint and associated response. If probable cause is determined, the panel may recommend penalties under SDCL 49-7A-18 or SDCL 49-7A-19. If any financial penalties are assessed in response to Complaint OC08-002, the amount will be based on the factors noted in SDCL 49-7A-26 which are as follows:

1. The amount of damage
2. The degree of threat to the public safety, and
3. The public inconvenience caused;
4. The respondent's plans and procedures to insure future compliance with statute and rules;
5. Any history of previous violations;
6. Other matters as justice requires.

You may address any of these items in your response if you believe it would be of value to the Enforcement Panel when they consider this complaint.

Pursuant to SDCL 15-6-55, failure to answer this Complaint could result in a default judgment being issued against you. Appropriate liens and other legal collection actions could result. You are strongly urged to reply to this Notice in the time frame described above and to obtain the advice of counsel should you have any legal questions.

A copy of the Operations Manual for Facility Operators and Excavators, the South Dakota One Call Statute and associated Administrative Rules are available on our web site www.sdonecall.com.

Procedural questions may be directed to Larry Englerth, Executive Director to the South Dakota One Call Notification Board, at 605-339-0529 or by email to exedir@sdonecall.com. I would request that you do not contact any members of the South Dakota One Call Notification Board to discuss this complaint. Since they may be involved in the Enforcement Panel review and/or a Chapter 1-26 hearing to resolve of the complaint, they have been advised by legal counsel to not discuss any pending complaint before the Board.

Enclosure: Copy of complaint; Operations Manual for Excavators and Operators

cc: Southeastern Electric Cooperative, Inc. (via email)



**Southeastern
Electric Cooperative, Inc.**

PO Box 388 • 501 South Broadway Avenue • Marion, SD 57043-0388
Telephone: 605-648-3619 • Facsimile: 605-648-3778 • E-mail sec@southeasternelectric.com

Alcester Office
PO Box 105
605 SD Highway 11
Alcester, SD 57001-0105
Telephone: 605-934-1961
Facsimile: 605-934-1964
Toll-Free in SD: 1-800-333-2859

RECEIVED

JUN 12 2008

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

June 10, 2008

Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

Attention: South Dakota One Call Board

Dear Board:

Please review complaint form attached with this letter.

Empire Construction damaged our facilities and do not seem to care that they did.

If you have any questions, please let me know.

Cooperatively yours,

Tim Chance
Operations Manager

TC:kw
Enc.

RECEIVED

JUN 12 2008

Mail completed form to:

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

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

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: Tim Chance

COMPANY: Southeastern Electric Cooperative, Inc. ADDRESS: 501 S. Broadway Ave. Marion, SD 57043 -0388

PHONE NUMBER: 1-800-333-2859 or (605) 934-1961

SIGNATURE: Tim Chance DATE: 6-16-08 EMAIL ADDRESS: tchance@southeasternelectric.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: Empire Construction PHONE NUMBER: 605-331-4400

ADDRESS: P.O. Box 90650 Sioux Falls, SD 57101

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

START DATE ON TICKET: DID EXCAVATOR WAIT UNTIL THE START DATE/TIME ON THE TICKET BEFORE

STARTING EXCAVATION? YES NO NA WERE BURIED FACILITIES EXPOSED BY HAND OR WITH

NON-INVASIVE EQUIPMENT PRIOR TO EXCAVATION? YES NO NA

III. FACILITY INVOLVED (IF ANY)

TYPE OF FACILITY INVOLVED: Electric Distribution OPERATOR OF FACILITY: Southeastern Electric Cooperative, Inc

OPERATOR ADDRESS: 501 S Broadway Marion, SD 57043-0388 PHONE NUMBER: 605-934-1961

DEPTH OF COVER: 42 INCHES PRESSURE: VOLTAGE: 12,470/7200 NUMBER OF CABLE PAIRS:2

IV. MARKING

WERE FACILITIES MARKED? YES NO NA

WAS THE MARKING COMPLETE PRIOR TO THE START TIME ON THE TICKET? YES NO NA

DID EXCAVATOR PRE-MARK WITH WHITE PAINT? YES NO NA WAS THE FACILITY MARKED ACCURATELY (WITHIN 18 INCHES)? YES NO NA DID EXCAVATOR USE REASONABLE CARE TO MAINTAIN LOCATE MARKS FOR LIFE OF PROJECT? YES NO NA HAVE YOU DISCUSSED THE PREVIOUS STATEMENTS WITH THE OTHER PARTY? YES NO IS THERE AGREEMENT? YES NO
IF NO, PLEASE EXPLAIN: Do not answer or calls, invoices or Letter

V. DAMAGE (IF ANY)

FATALITIES: INJURIES: LENGTH OF HOSPITALIZATION:
ESTIMATED PROPERTY DAMAGE (\$): \$2,805.47 NUMBER OF CUSTOMERS AFFECTED: 863
DAMAGED IN: PUBLIC PRIVATE (RIGHT-OF-WAY)
PHOTOS OF THE DAMAGED FACILITY? YES NO (Did not find them at this time)
ADDITIONAL INFORMATION: Admitted to the linemen they were at fault and were digging with out a ticket also will not pay for the damages cause by this action

VI. PROBABLE VIOLATION

SPECIFIC STATUE(S) OR RULE(S) THAT WHERE VIOLATED:
49-7A-5 Notification of proposed excavation
49-7A-10 Liability for damages to underground facility

ADDRESS/LOCATION OF PROBABLE VIOLATION:
7313 W. 65th St. Sioux Falls, SD

DATE/TIME OF PROBABLE VIOLATION:
12/10/07

HAVE YOU DISCUSSED THIS PROBABLE VIOLATION WITH THE PARTY THE ACTION IS FILED AGAINST:
YES NO (We have tried to contact them with no response)

IF YES, NAME OF THE PARTY WITH WHOM YOU DISCUSSED THE PROBABLE VIOLATION:
Letter was sent to them on May 12th 2008, two separate mailings of the invoice and also left messages on their answering machine., There has been no response to anything sent to them or message left.

DESCRIPTION OF PROBABLE VIOLATION:
Did not call for a locate and damaged primary cable, secondary cables and transformer