

SHARPE

ENTERPRISES, INC.

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RECEIVED

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**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

To: SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

From: Sharpe Enterprises, Inc

Date: November 2, 2009

RE: Response to Complaint # OC09-008 filed by South Dakota Network, LLC

Dear Sirs / Madam:

We are responding to your complaint # OC09-008 as filed by South Dakota Network, LLC for an incident where the fiber optics line located on the East Side of Governors Drive at the MacKay State Library was cut by our trencher. The property address is 800 Governors Drive in Pierre, South Dakota 57501. The incident occurred at approximately 7:10 – 7:15 AM on the morning of August 26, 2009.

Sharpe Enterprises, Inc had called in a One Call Locate Excavation Planning request prior to starting any work on this project. This original One Call confirmation number was # 092-080-374. We requested a locate on the entire property, including the entire Governors Drive frontage, the entire South Side parking lot, the entire North Side of the property extending out 200' from the building and the entire East Side of the property extending out 200' from the building. This locate was completed, lines were marked and flagged and work began on the project. At the time of the original locate we walked the site with the technician from ELM locate service who told us that the Fiber Optics ran on the West Side of Governors Drive and that there was no fiber optics lines in the the project area from approximately straight out from the main entrance extending to the North all along the East side of Governors Drive , (the area where the fiber optics lines were eventually cut).

Sharpe Enterprises, Inc called in a re-locate request on Monday morning August 24, 2009 at approx 8:45 AM. This re-locate request was for the exact same boundaries as previously located and was done in advance of trenching for an electrical conduit that was to run from Governors Drive along the North side of the property and back down the East side of the property to a transformer centrally located on the East side of the State Library. The confirmation number for this re-locate was # 092-360-042.

The City of Pierre, Midcontinent Cable and MDU were all on site to re-mark their locations, none of which had any utilities in the area where we cut the Fiber Optics line. ELM locate service came the afternoon of August 25 and also re-marked his locations for QWEST and South Dakota Network. We again walked the site with the ELM technician and he again told us that we were good to go with

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where we planned to trench for the new electrical conduit because the fiber optics lines were on the West side of Governors Drive.

On the morning of August 26, 2009 we set up our trencher and started trenching to create a trench to bury the new electrical conduit. At approximately 7:10- 7:15 AM just as we had started trenching we cut through an unmarked fiber optics line. Our trenching crew contacted me and in turn I had our office staff contact the State Engineer to notify them of the situation as we did not know if this was an abandoned line or for what it was for sure because we had been told by the ELM technician on two separate occasions that there were no fiber optics lines on the East side of Governors drive in the area where we cut the line.

Following the incident Sharpe Enterprises, Inc. called in an Emergency Cut Locate on August 26 once it had been determined that this was indeed an active in use fiber optics line. The confirmation number for this Emergency response was # 092-380-065. The State Engineer and several other individuals from the State Buildings and Grounds along with State Bureau of Administration were on site when the same ELM technician showed up in response to the Emergency Cut locate. The ELM technician again told several of us that he visited with that he did not know there was any fiber optics cable buried on the East side of Governors Drive.

One of the discussions that was brought to our attention the morning of the incident was that our One Call Excavation request was not within the 48 hour response timeline. The timing of the incident unfortunately puts us something like 46 hours and some minutes rather than the required 48 hours. However, we do not feel it is reasonable to believe that anything would have changed had we waited an additional two hours. The locates had been completed the day prior and the fact of the matter is that the same area had been marked three weeks prior as well. In both instances Sharpe Enterprises, Inc was diligent in walking the area with the locate services and were told by the ELM technician that the area we were planning on trenching was clear and that the fiber optics cable ran on the West side of Governors Drive. Given this information (which unfortunately was incorrect) we do not believe that we acted recklessly or without regard for the law. The fact of the matter is that ELM locate service did not properly locate the Fiber Optics line and no matter what the timeline, nothing would have changed that fact.

We have always been diligent in filing a One Call Locate Excavation Planning request on our projects as well as requesting a re-locate any time that we have construction or weather conditions that might have removed or obscured any of the One Call markings. One lesson we have learned from this is that Sharpe Enterprises, Inc. will be diligent in all future One Call requests to make note of the effective time of the locate and make sure that we are in complete compliance with the 48 hour notification.

We do not feel however, that Sharpe Enterprises, Inc. is at fault in this matter. We believe there is clear evidence that ELM locate service simply operated off erroneous information and did not properly mark the fiber optics lines that were in our trenching path.

To further support our position we have attached a letter from Larry Harris of Larry's Electric who also had One Call locates done for his work on the same property. He also had discussions with the same ELM locate service technician who told Larry that he didn't know there was a fiber optic line in the area of the incident.

We hope that this report will provide you with the insight and information to reject the claim of South Dakota Network LLC against Sharpe Enterprises, Inc and instead place the culpability on ELM locate service who clearly missed locating the fiber optics line in question.

If you have any further questions we would be happy to answer them for you.

Sincerely,



Gerrick McComsey
President
Sharpe Enterprises, Inc.

Attachment: Letter from Larry's Electric

Friday, October 23, 2009

To: Neal Hoyme, Sharpe Enterprises Inc.

From: Larry Harris, Larry's Electric Inc.

Re: South Dakota one call ticket number # 092110237

On or around August 1st 2009 I called in a locate with the South Dakota one call. The address of 800 governor's drive. (The makay state library) At this time I was getting ready to do some electrical trenching. I asked for the locater to call me when he was on site to go over the project. (Like I do with all jobs with a great deal of trenching). When he called me I asked him to locate the SDN fiber lines on the east side, the back of the building. At that time I asked if there were any other lines I needed to worry about in the front of the building. I needed to trench for a light close to the parking lot approach off governors drive. He told me that there were no lines on the east side of governor's drive and that the SDN had one on the west side of governor's drive. Therefore he didn't mark this line that Sharpe trenched through on august 26th. Or when I called for a locate earlier that month for me.

After the August 26th incident I called for another locate to finish the trenching and drilling the holes for the light bases. I met with the guy from ELM and walked the job site. He told me that he didn't know the SDN line ran on both sides of governor's drive.

Larry Harris