

Recd SD one call
2/20/05
JE

UCU5-002

Mail completed form to:

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

RECEIVED

FEB 23 2005

**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 BUSINESS PERSON FILING COMPLAINT: Keith Toczek

COMPANY: Elliot Construction, Inc. ADDRESS: 263 Kniest Ave. Yankton SD 57078 PHONE NUMBER: 605-665-4345

SIGNATURE OF COMPLAINANT: *Keith Toczek* DATE: 2/20/05 EMAIL ADDRESS: kt101@mchsi.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: Excel Energy/ United Locating PHONE NUMBER: 612-215-4516

ADDRESS: PO Box 8 Eau Claire, WI 54702

WAS A LOCATE REQUESTED FROM SD ONE CALL? YES LOCATE TICKET #: 043290242

START DATE ON TICKET: 11/24/04

DID EXCAVATOR WAIT UNTIL THE START DATE/TIME ON THE TICKET BEFORE COMMENCING EXCAVATION? YES

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

III. FACILITY INVOLVED (IF ANY)

TYPE OF FACILITY INVOLVED: 3 phase power line OPERATOR OF FACILITY (IF KNOWN): Excel

OPERATOR ADDRESS: above PHONE NUMBER: above

DEPTH OF COVER: 5 feet PRESSURE: n/a VOLTAGE: high/ 20,000 plus estimated NUMBER OF CABLE PAIRS: n/a

IV. MARKING

WERE FACILITIES MARKED? Not correctly

WAS THE MARKING COMPLETE PRIOR TO THE START TIME ON THE TICKET? YES

DID EXCAVATOR PRE-MARK WITH WHITE PAINT? NO

WAS THE FACILITY MARKED ACCURATELY (WITHIN 18 INCHES)? NO

DID EXCAVATOR USE REASONABLE CARE TO MAINTAIN LOCATE MARKS FOR LIFE OF PROJECT?
YES

HAVE YOU DISCUSSED THE PREVIOUS STATEMENTS WITH THE OTHER PARTY? YES

IS THERE AGREEMENT? YES NO IF NO, PLEASE EXPLAIN: I called and discussed this with Arlie Andrews at Excel Claims. I sent copies of statements and a letter explaining our position (enclosed). I have not received a response as of 2/20/05.

V. DAMAGE (IF ANY)

FATALITIES: 0 INJURIES: 0 LENGTH OF HOSPITALIZATION: 0

ESTIMATED PROPERTY DAMAGE (\$): 434.52 NUMBER OF CUSTOMERS AFFECTED: 0

DAMAGED IN: (RIGHT-OF-WAY)

PHOTOS OF THE DAMAGED FACILITY? YES

ADDITIONAL INFORMATION: _____

VI. PROBABLE VIOLATION

SPECIFIC STATUE(S) OR RULE(S) THAT WAS VIOLATED: 49-7A-8

ADDRESS/LOCATION OF PROBABLE VIOLATION: 57th and Marion Rd. Sioux Falls, SD

DATE/TIME OF PROBABLE VIOLATION: 11/24/04 3:30 p.m.

HAVE YOU DISCUSSED THIS PROBABLE VIOLATION WITH THE PARTY THE ACTION IS FILED AGAINST: YES

IF YES, NAME OF THE PARTY WITH WHOM YOU DISCUSSED THE PROBABLE VIOLATION: Arlie Andrews

DESCRIPTION OF PROBABLE VIOLATION: Failure to accurately mark lines in accordance with 49-7A-8.

On November 24, 2004 a crew from Action Electric damaged a fiber optic line owned by Midcontinent Communications at 57th and Marion Road, Sioux Falls, SD. As Midcontinent's maintenance contractor, we called in emergency locate request # 043290242 to dig up and repair the damaged line. A locator from United Locating (a contract locator) responded to locate both Qwest and Excel lines. One of our foremen on site, Kevin Callahan spoke with Jason (the locator) and explained the situation and showed him where we needed to dig. ULS located a Qwest line at our dig site and Kevin asked him if he was done. The ULS locator said "yes". Kevin and another E.C.I. employee noticed one old power flag by the rear of our machine and brought that to the ULS locator's attention. He said he would check his

maps and then started locating the line. ULS located the line(s) just north of the curb line, south of the fiber we were to expose. Kevin started digging north of the damaged fiber and when he got about 5 feet deep, another E.C.I. employee, Brent Mentele saw something in the bottom of the pit and yelled at Kevin to stop digging. Kevin removed the backhoe. The Excel line was exposed and "skinned" along the top of several lines. Fortunately the outside "ground" portion of the lines were damaged and no contact with the inner conductor was made. Action Electric's auger had missed boring through these lines by a few inches.

Our people called the ULS locator over to see what how far off his marks were (three to four feet) and to make him aware of the mistake. He then located the line again, this time marking the line three to five feet north of his previous marks. He "scratched out" his old marks (see enclosed photos) and painted new, "accurate" marks. He made several comments to the on-site people apologizing for the mistake and that "this one was his" indicating he knew he was at fault. Excel was called and they repaired the line.

Almost a month later, I received a bill from Excel claims for the damage. Apparently ULS reported to Excel that this damage was due to negligence on our part. The claims representative I spoke to said ULS claimed we had started digging before their locator was done. This claim has been refuted by many witnesses. Statements from some of these witnesses have been included with this complaint.

From our point of view, our people followed procedure. We called for locates. Our people communicated with and clearly explained our digging plan to United Locating (Excel contractor). Their locator was either operating off a map that was not up to date, or he failed to read and/or correctly interpret the power map he had. Either way, ULS failed to be aware of a major electric line until our people brought it to their attention. ULS/Excel then failed to mark it correctly. Their markings were three to five feet off, as the enclosed photos clearly show. After the line was hit, the ULS/Excel locator verbally accepted responsibility for the "mistake" to several people at the scene. The ULS/Excel locator or his superiors then failed to accurately report the day's events to Excel and therefore it's claims department. This caused a damage claim (copy enclosed) against us requiring time and expense to respond to.

E.C.I. has always worked well with Excel locators. We rarely have problems with Excel's "in house" people. Their professionalism and familiarity with their plant is evident. Conversely, we regularly have problems with some ULS locators. I have spoken with Excel about several other ULS mislocates involving high voltage, and was told it would be looked into. As easements become more congested with buried utilities and municipalities put more stringent guidelines on cable placement (closer together), the need for dependable, accurate cable marking has become critical. The health and well being of our people is directly affected by Excel and it's efforts (or lack thereof) to accurately locate their lines and feel this incident warrants complaint.

263 Kniest Ave.
Yankton, SD 57078-6742

605-665-4345
Mobile 605-660-1497
Fax 605-665-2542

Mr. Arlie Andrews
Excel Energy Claims Dept.
800 Nicollet Mall
29th Floor
Minneapolis, Mn 55402

Re: Damage claim 10517388, 57th & Marion Rd. Sioux Falls SD

Dear Mr. Andrews,

Per our conversation, I am forwarding some information we have collected on the damage at 57th St. The statements are mostly from our crewmen and one from the Construction Manager at Midcontinent. There were many other people on site from Midco and Action Electric, but I think the statements enclosed will give you a good idea of what is going on.

On 11/24/04 Action Electric was digging a hole for a light pole base when they damaged an innerduct with a 12 count fiber line owned by Midcontinent Communications. We were called to repair the cut. Kevin Callahan (E.C.I. foreman) called in emergency locate request number 043290242 and called more of our guys. Locators from the various utilities and a locator from United Locating Service arrived and either marked or cleared us to dig. The ULS locator told Kevin there was no power at the spot we needed to dig. Kevin and another E.C.I. foreman noticed an old power flag in the area and asked ULS what it was. The locator (Jason) said he would check his maps. He then came back and located the primary and put paint down along the curb, south of the fiber line that we were to repair.

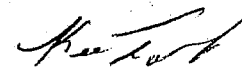
Both Kevin and Jeff tell me that they asked Jason (ULS) if he was done, and he said "yes". Kevin started digging with Brent Mentele helping. Kevin dug to a depth of about five feet deep, at least three to four feet north of the power marks when his backhoe bucket scraped along the top of the Excel line. Brent yelled "wait, stop" at Kevin and they removed the hoe. The bucket took the outer coating off several of the lines, but fortunately didn't cut them. Action Electric had also just missed these lines by inches with their auger.

Kevin showed Jason (ULS) the lines in the bottom of the hole and he relocated the line. This time he located it where it actually was and "scratched out" his first marks. I've enclosed pictures of this. He also apologized to Kevin and Jeff for the "screw up" and said he "owned it" meaning the damage was his fault. If he wanted the digging to either not start or to stop, he was right there and could have stopped the operation at any time.

We have had many problems with United Locating. Our people regularly have to recall or get site verifications because of bad or no markings. We have always enjoyed a good working relationship with Excel's "in house" locators and have found they are very dependable and professional. Your man, "NSP Mike" is a good example of that.

One of two conclusions can be drawn from all of this. Either a half dozen people conspired to lie to me about this four hundred dollar deal, or a ULS employee is either memory or truth-impaired. My experience with ULS makes me lean towards the latter.

If you have any questions, please feel free to call me at the numbers listed above.



Keith Toczek

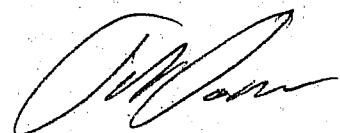
263 Kniest Ave.
Yankton, SD 57078-6742

605-665-4345
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This statement was made by Jeff Jones, foreman for E.C.I. regarding damage to an Excel power line at 57th and Marion Rd. in Sioux Falls, SD on 11/24/04. Locate ticket # 043290242.

"I showed up after Kevin had called in emergency locates. We waited for two hours for locators to show up. They all located their lines and we asked if everybody was done. ULS said they were done and we noticed a flag behind our trencher and made the locator aware of it. He called his supervisor and hooked up to it and marked two feet south of the Midcontinent fiber that was damaged. We asked him if he was done and he said yes. We started to dig up the fiber line and found it about five feet deep. We started to dig the hole bigger so they could fix the fiber and in the process scraped along the top of the power line. Brent yelled "wait! Stop!" and Kevin pulled the hoe out. The marks were three to four feet off. The locator was there, so we made him check his marks. When he relocated it, he was locating it right where we had just hit it. He then said he was sorry for not locating it right. The power company was then called and they came and fixed it.

I was on another job about a week after that took place and the same locator was there. He said the 57th and Marion cut was his fault and continued to apologize again."

 1-31-05
Jeff Jones

263 Kniest Ave.
Yankton, SD 57078-6742

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Mobile 605-660-1497
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This statement was made by Kevin Callahan, foreman for E.C.I. regarding damage to an Excel power line at 57th and Marion Rd in Sioux Falls, SD on 11/24/04. Ticket #043290242.

"I got called to dig up a cut fiber at 57th and Marion. I called in emergency locates and hauled a backhoe over. The locators were finishing up and the ULS guy (Jason) located phone lines. Then he told me there was no power where we were digging and I asked him what that red power flag was that was sticking out of the ground behind my machine. He said he's check his maps then he started locating. He put his marks south of the cableTV fiber line. We dug down on the north side of the fiber and needed to make the hole bigger for the splicers. I went down another foot and Brent yelled "wait, stop" and I stopped. I scraped the top outside coating. Jason came over and said something to Erin that made her mad and said this was his fault to me. I was about 5 feet deep, and when we got everything exposed, you could see that the Action Electric crew just missed drilling through the power we had hit. Bill, Erin, Mike, John, Greg and two other CableTV people were there also."

 1-31

Kevin Callahan

263 Kniest Ave.
Yankton, SD 57078-6742

605-665-4345
Mobile 605-660-1497
Fax 605-665-2542

This statement was made by Brent Mentele, a foreman for E.C.I. regarding damage to an Excel power line at 57th and Marion Rd. Sioux Falls SD on 11/24/04. Locate ticket # 043290242.

"Kevin called me and said there had been a fiber cut on 57th and Marion and to meet him there. When we showed up, the locator had the power marked on the south side of the sidewalk right next to the curb and cable TV marks. The locator said he was done and we could start digging. Kevin was on the backhoe and I was standing right by the hole. When he was about five feet deep, taking a scoop out, I saw the primary power cables and told Kevin to stop, so he backed off. We then told the locator he was off his marks."

Brent Mentele

263 Kniest Ave.
Yankton, SD 57078-6742

605-665-4345
Mobile 605-660-1497
Fax 605-665-2542

This statement was made by Dan Jones, a worker for E.C.I. regarding damage to an Excel power lines at 57th and Marion Rd, Sioux Falls SD on 11/24/04. Ticket #043290242.

"I arrived at 57th and Marion with Brent Mentele after receiving a call from Kevin Callahan. We were there to help dig up a fiber line that had been cut by Action Electric. Kevin called in emergency locates and was waiting for them to finish locating. When ULS finished locating we asked him if they were all done and he said they were. We dug up the fiber line and needed to expose it more so they could get in the hole and fix it. Upon digging the hole wider and deeper we scraped into a power line which had been located three feet south of our hole. The locator from ULS was standing by the hole after we scraped it and admitted it was his fault. The power company was called and came out to fix the line. After locating the line again, he found his marks were off by at least three feet."

Dan Jones 1/31/05

Dan Jones



3507 South Duluth Avenue
Sioux Falls, South Dakota 57105
(605) 339-3339 • Fax (605) 335-1987

ECI
263 Kniest Ave
Yankton, SD 57078

January 27, 2005

On November 24, 2004, Action Electric drilled through our fiber and distribution services located at 57th and Marion Rd. After this had been identified, we called in ECI and asked that they prepare themselves to start excavating if it became necessary. ECI then called in an emergency locate. ULS showed up on site immediately as well as the other utilities. ULS had already located a power cable (Xcel) on the new driveway, just west of where we had to excavate. As ECI started to dig, there was a group of individuals overlooking the site. I heard a "WAIT" hollered out and a "STOP". ECI had found another power cable (Xcel) that was unmarked. I was frustrated with the locator and he knew this, he made the comment that why didn't we wait to dig. I asked him, why then did you mark in front of us and behind us and not where he should have. He later apologized to me and said that this one was his or that he owned it because he did not have it marked properly.

I can be reached at 605-274-8545 if you have any additional questions.

Sincerely,

A handwritten signature in black ink that reads "Erin Hayes". The signature is written in a cursive, flowing style.

Erin Hayes
Regional Construction Manager
Midcontinent Communications

Over Fifty  Years of Service

The logo for the 50th anniversary, featuring the number "50" in a large, stylized font with a circular design around the "0".

MINNESOTA

Customer mail correspondence should be sent to:

Xcel Energy
Attn: Customer Billing
PO Box 8
Eau Claire, WI 54702-0008

Please return copy of statement with your payment to insure proper credit

DC ELLIOT CONSTRUCTION
ATTENTION: DAMAGE CLAIM MN 10517388
263 KNIEST AVE
YANKTON SD 57078

Customer Number 11105
Invoice Date 12/17/2004
Date Due 01/07/2005
Amount Due \$434.52

Invoice 42910:

Charges	Amount
DAMAGE REPAIR ELEC UG LABOR MN	\$338.46
DAMAGE REPAIR ELEC UG MATERIAL MN	\$47.14
DAMAGE REPAIR ELEC UG EQUIP MN	\$42.90
SOUTH DAKOTA EXCISE TAX 2.00%	\$6.03
<i>Subtotal</i>	<i>\$434.52</i>
Total Charges	\$434.52


Repaired underground electric feeder service damaged by backhoe on 11-24-04 at W 57th St & Marion Rd, Sioux Falls, SD.

For questions or concerns about your damage claim, please call and leave a voice mail message at 612-215-4516, or contact us by mail:

Xcel Energy Claims Services
800 Nicollet Mall, Suite 2900
Minneapolis, MN 55402

Also, please send a copy of this invoice to your insurance company.

Please send invoice stub including customer number when remitting your payment to:

 Xcel Energy
Attn: Customer Billing
PO Box 8
Eau Claire, WI 54702-0008

263 Kniest Ave.
Yankton, SD 57078-6742

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Mobile 605-660-1497
Fax 605-665-2542

Excel damage at 57th and Marion Rd. 11/24/04
Ticket# 043290242

1. North side of 57th looking east. Red marks on left side that says "3-phase" and big red line on curb are the second set of marks painted AFTER we damaged line and showed ULS/Excel locator. "Scratched out" line by orange fiber mark at right and red dot/line on curb were the first marks put down. First marks indicated primary was laying directly below east/west curb line.
2. Closer view shows marks 4 feet off.
3. View at curb. Bigger red line was second attempt done after we hit primary, red line (smaller) at right was initial mark we were working north of.