



South Dakota One Call Notification Board

Larry Englert
Executive Director

1012 North Sycamore Ave.
Sioux Falls, SD 57110

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

March 11, 2005

Cheryl Campbell, Director
XCEL Energy
Lipan Distribution Complex
1123 West Third Avenue
Denver, CO 80223

Elliot Construction, Inc.
Keith Toczek
263 Kniest Ave
Yankton, SD 57078

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on April 13, 2005, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC05-002 filed by Elliot Construction Company against XCEL Energy.

By a unanimous vote of the Enforcement Committee, the recommended resolutions to the alleged violation included in this complaint were determined to be as follows:

Complaint OC05-00

Alleged Violation of SDCL 49-7A-8 Location of Underground Facilities - Marking
The Enforcement Committee found that there was probable cause that XCEL Energy had violated SDCL 49-7A-8 by inaccurately locating an underground power line on Ticket Number 043290242 on November 24, 2004.

The committee recommends a penalty of five hundred dollars (\$500.00) with three hundred dollars (\$300.00) suspended on the following conditions:

1. XCEL Energy fully complies with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC05-002 by both parties.
2. XCEL Energy fully complies with the resolution of Complaint OC05-002 by making payment of the two hundred dollars (\$200) within thirty (30) days of the issuance of the Order to close Complaint OC05-002.

The findings and recommendation of the Enforcement Committee are summarized on the attached form.

Under SDCL 49-7A-27 either party may accept the recommendation of the Enforcement Committee or reject the recommendation of the Enforcement Committee by requesting a formal hearing on the violation alleged in this complaint. Your decision should be reflected on the third page of the attachment with the header "Acceptance or Rejection by Parties. **Please return the signed and dated form prior to the close of business on May 9, 2005 to:**

South Dakota One Call Notification Board
1012 N. Sycamore Avenue
Sioux Falls, SD 57110-5747

If both parties accept this resolution, the South Dakota One Call Notification Board is required to accept the resolution and close this complaint. If either party rejects the Enforcement Committee resolution of the alleged violation, the South Dakota One Call Notification Board will conduct a hearing as a contested case under Chapter 1-26 to resolve the allegation alleged in the rejected complaint. Following this hearing, the Board shall either render a decision dismissing the complaint for insufficient evidence or shall impose a penalty pursuant to SDCL 49-7A-18 or SDCL 49-7A-19..

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.**

If you have any procedural questions relative to this complaint, please contact me at 605-339-0529 or by email at 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 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.

Sincerely,

Larry L. Englerth
Executive Director

Ed Traut, XCEL Energy

ENFORCEMENT COMMITTEE ACTION
OC05-002
Elliot Construction vs. XCEL Energy

FINDINGS:

OC05-002

Alleged Violation of SDCL 49-7A-8 Location of Underground Facilities - Marking

Allegation is made by Elliot Construction that XCEL Energy did not accurately mark an underground power line on Ticket Number 043290242 on November 24, 2004.

The response received from XCEL Energy did not dispute the allegation that the original marking of the power line was inaccurate but stated that the locator was not certain of the marks and was still in the process of completing the locate activity associated with the ticket when the damage occurred..

In reviewing the complaint filed by Elliot Construction and the response from XCEL Energy, the committee determined the following:

1. Elliot Construction had a valid ticket for the excavation site that clearly identified the excavation site.
2. The complaint filed by Elliot Construction contained multiple witness statements including a statement from a third party (Midcontinent Communications) that supported the allegations in the complaint.
3. The complaint filed by Elliot Construction included multiple photographs taken at the excavation site that supported the allegations of the complaint.
4. The complaint and the response both indicate that the locator for XCEL Energy was at the excavation site when the damage occurred which resulted in the allegation that the power line had been inaccurately marked.
5. The total length of the excavation site was approximately 100 feet and if the locator was in the process of evaluating the quality of the original marks, he would have been in close proximity to the excavation activity.
6. The complaint indicated that the point of damage to the XCEL power line was at a depth of 5 feet and the damage occurred when the excavation site was being widened. This indicates that the damaged power line, which was alleged to have been inaccurately marked, occurred after a period of excavation activity which would have allowed the locator to notify the equipment operator that he had not completed the marking of the power line.
7. The response filed by XCEL Energy did not provide any supporting written documentation from the locator who was involved in the incident or the XCEL technician who repaired the damaged facility.

Based on the information noted above, the Committee found that there was probable cause that XCEL Energy had violated SDCL 49-7A-8 by inaccurately marking the underground power line on Ticket Number 0403290242.

RECOMMENDATION

OC05-002

VIOLATION OF SOUTH DAKOTA SDCL 49-7A-5:

The Committee found that there was probable cause that XCEL Energy had violated SDCL 49-7A-8 by inaccurately marking the underground power line on Ticket Number 0403290242.

PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-18:

The committee recommends a penalty of five hundred dollars (\$500.00) with three hundred dollars (\$300.00) suspended on the following conditions:

1. XCEL Energy fully complies with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC05-002 by both parties.
2. XCEL Energy fully complies with the resolution of Complaint OC05-002 by making payment of the two hundred dollars (\$200) within thirty (30) days of the issuance of the Order to close Complaint OC05-002.

COMMENTS:

ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC05-002

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-002.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-002, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC05-002.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-002. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-002. THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF SDCL 49-7A-18 OR SDCL 49-7A-19.

TO ACCEPT OR REJECT THE RESOLUTION OF THE ALLEGE VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON MAY 9, 2005.

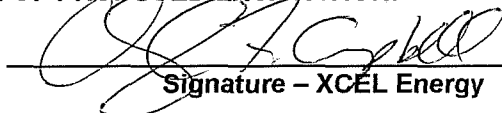
SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
1012 N. SYCAMORE AVENUE
SIOUX FALLS, SD 57110-5747

PURSUANT TO SDCL 15-6-55, FAILURE TO ANSWER THIS COMPLAINT RESOLUTION COULD RESULT IN A DEFAULT JUDGEMENT BEING ISSUED AGAINST YOU. APPROPRIATE LIENS AND OTHER LEGAL COLLECTION ACTIONS COULD RESULT.

OC05-002

VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-002 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.



Signature – XCEL Energy

4/21/05

Date

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-002 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC05-002.

Signature – XCEL Energy

Date

ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC05-002

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-002.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-002, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC05-002.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-002. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-002. THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF SDCL 49-7A-18 OR SDCL 49-7A-19.

TO ACCEPT OR REJECT THE RESOLUTION OF THE ALLEGE VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON MAY 9, 2005.

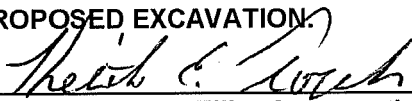
SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
1012 N. SYCAMORE AVENUE
SIOUX FALLS, SD 57110-5747

PURSUANT TO SDCL 15-6-55, FAILURE TO ANSWER THIS COMPLAINT RESOLUTION COULD RESULT IN A DEFAULT JUDGEMENT BEING ISSUED AGAINST YOU. APPROPRIATE LIENS AND OTHER LEGAL COLLECTION ACTIONS COULD RESULT.

OC05-002

VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-002 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.



Signature – Elliott Construction

4/25/05

Date

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-002 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC05-002.

Signature – Elliott Construction

Date

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Elliot Construction, Inc.
Keith Toczek
263 Kniest Ave
Yankton, SD 57078

COMPLETE THIS SECTION ON DELIVERY

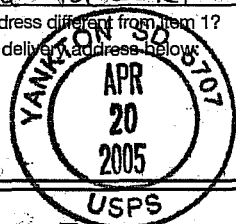
A. Signature

X *Dianne Toczek* Agent Addressee

B. Received by (Printed Name)

Dianne Toczek C. Date of Delivery *4-20-05*

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below No



3. Service Type

- Certified Mail Express Mail
- Registered Return Receipt for Merchandise
- Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number
(Transfer from service label)

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