



South Dakota One Call Notification Board

Larry Englerth
Executive Director

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Sioux Falls, SD 57110

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TO: XCEL ENERGY

FROM: SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

RE: NOTICE OF COMPLAINT; DEADLINE FOR ANSWER;

In the Matter of the Complaint OC05-002 filed by Elliott Construction, Inc. against XCEL Energy, regarding a failure to accurately mark the location of an underground facility as required by SDCL 49-7A-8.

You are hereby notified that the enclosed complaint as referenced above has been filed with the South Dakota One Call Notification Board against XCEL Energy. 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 March 18, 2005, by filing the original and two copies of the answer at the address listed below and by serving a copy on the complainant.

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

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-8 referenced in the complaint:

Failure to mark the location of an underground facility on emergency locate request 0432909242 on November 24, 2004 at the intersection of 57th Street and Marion Road 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. Failure to respond to this notice will be considered as concurrence that the allegations included in the complaint are accurate. 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 OC05-002, 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 is enclosed. The South Dakota One Call Statute is reprinted in this manual starting on page 25 with the penalty section starting at the bottom of page 29. We would encourage you to review this material prior to completing your response.

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 ezedir@sdonecall.com.

Enclosure: Operations Manual, copy of complaint, copy of ticket

cc: Keith Toczek, Elliott Construction, Inc., Complainant (cover letter only via email)

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:

Ed Traut
XCEL Energy
3515 3rd St. N.
St. Cloud, Mn 56301

2. Article Number
(Transfer from service label)

7003 1010 0000 7864 8081

PS Form 3811, August 2001

Domestic Return Receipt

2ACPRI-03-Z-0985

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Karen Jones* Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

2/28/05

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