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May 4, 2007

Juston Kuper  
JHK Excavating  
46591 277<sup>th</sup> Street  
Lennox, SD 57039

Tim Chance, East Operations Mgr  
Southeastern Electric Cooperative, Inc.  
P.O. Box 105  
Alcester, SD 57001-0105

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on May 3, 2007, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC07-002 filed by Southeastern Electric Cooperative, Inc. against JHK Excavating

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

**Complaint OC07-002**

Alleged Violation of SDCL 49-7A-5 Notification of Proposed Excavation

The Committee found there was probable cause that JHK Excavating had violated SDCL 49-7A-5 by commencing excavation at 7505 West 64<sup>th</sup> Street in Sioux Falls, SD, without providing advance notification to the South Dakota One Call System as required by statute.

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

1. JHK Excavating fully complies with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC07-002 by both parties.
2. JHK Excavating fully complies with the resolution of Complaint OC07-002 by making payment of the two hundred dollars (\$200) within thirty (30) days of the issuance of the Order to close Complaint OC07-002.

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 second 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 28, 2007, to:**

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

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](mailto: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

# **ENFORCEMENT COMMITTEE ACTION OC07-002**

**Southeastern Electric Cooperative, Inc. vs. JHK Excavating**

## **FINDINGS:**

**OC07-002**

### **Alleged Violation of SDCL 49-7A-5 Notification of Proposed Excavation**

Allegation is made by Southeastern Electric Cooperative, Inc. that JHK Excavating commenced excavation at 7505 West 64<sup>th</sup> Street in Sioux Falls, SD, without providing prior notification to the South Dakota One Call System as required by SDCL 49-7A-5.

JHK Excavating did not dispute the allegation that excavation activity had commenced without providing advance notification to the South Dakota One Call System.

In reviewing the complaint filed by Southeastern Electric Cooperative, Inc. and the response from JHK Excavating, the committee determined the following:

JHK Excavating had commenced excavation without providing advanced notification to the South Dakota One Call System.

Based on the information noted above, the Committee found that there was probable cause that JHK Excavating had violated SDCL 49-7A-5 without providing advance notice to the South Dakota One Call System.

## **RECOMMENDATION**

**OC07-002**

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

The Committee found there was probable cause that JHK Excavating had violated SDCL 49-7A-5 by commencing excavation at 7505 West 64<sup>th</sup> Street in Sioux Falls, SD, without providing advance notification to the South Dakota One Call System as required by statute.

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

The committee recommends a penalty of five hundred dollars (\$500) with three hundred dollars (\$300) suspended on the following conditions:

3. JHK Excavating fully complies with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC07-002 by both parties.
4. JHK Excavating fully complies with the resolution of Complaint OC07-002 by making payment of the two hundred dollars (\$200) within thirty (30) days of the issuance of the Order to close Complaint OC07-002.

## **COMMENTS:**

The response from JHK Excavating appeared to indicate that on previous excavations, the locate requests had been called into the South Dakota One Call System by the property owner or some other party. The Committee wants to insure that JHK Excavating clearly understands that all locate request should be initiated by the party doing the actual excavating work.

**ACCEPTANCE OR REJECTION BY PARTIES  
COMPLAINT OC07-002**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC07-002.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC07-002, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC07-002.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC07-002. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC07-002. 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 28, 2007.

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 JUDGMENT BEING ISSUED AGAINST YOU. APPROPRIATE LIENS AND OTHER LEGAL COLLECTION ACTIONS COULD RESULT.

**OC07-002**

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

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC07-002  
VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC07-002  
VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION  
AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN  
COMPLAINT OC07-002.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date