

ANSWER OF SALZSIEDER CONSTRUCTION
TO COMPLAINT OF CENTURYLINK

Salzsieder Construction, for its Answer to the Complaint of Centurylink, states, admits and denies as follows:

1. Salzsieder Construction denies all allegations except as are specifically admitted herein.
2. Contrary to the allegations in the Complaint, Salzsieder Construction did have a locate ticket for the dig. This is attached, marked Exhibit "A," and incorporated herein by reference. The Salzsieder construction company name and Milan Salzsieder's name were spelled inaccurately on the ticket.
3. The cable was not properly and timely marked on the locate. It was not marked at all. The only marks were south of where the digging occurred, and were across the alley.
4. Salzsieder Construction was on the scene for 48 hours before excavation commenced. Milan Salzsieder spoke with City and MDU personnel, but never saw anyone from Centurylink.
5. The cable was encountered 08/25/2014, and was accidentally cut into and pulled from a terminal box out from the 12 – 14' ditch.
6. The alleged violation was obviously not intentional.
7. Milan Salzsieder promptly called 811 to report the damaged line, which is proper procedure.
8. Milan Salzsieder waited on site for confirmation as to whether it was an abandoned cable. The City and MDU called and confirmed that it was not their property.

9. Around noon, Milan Salzsieder had to bring a truck to a dealer, and returned around 1:00 P.M..

While he was gone someone came out and painted an orange line with a circle through it in line of the ditch. Milan assumes it was the locating service, but was not placed before the excavation.

10. Milan Salzsieder called Centurylink to find out what the new orange symbol meant, but could not find anyone to speak with. No one from Centurylink or the locator called Milan back to confirm whether the cable was abandoned or not.

11. Milan Salzsieder disagrees with the estimated damage and puts Centurylink to its burden of proof.

12. Centurylink claims violations under SDCL 49-7A-5 and 49-7A-10.

49-7A-5. Notification of proposed excavation. No excavator may begin any excavation without first notifying the one-call notification center of the proposed excavation. The excavator shall give notice by telephone or by other methods approved by the board pursuant to rules promulgated pursuant to chapter 1-26 to the one-call notification center at least forty-eight hours prior to the commencement of the excavation, excluding Saturdays, Sundays, and legal holidays of the state. The board may promulgate rules to reduce the forty-eight-hour interval for emergency or subsequent inquiries to the original locate request and may lengthen the forty-eight-hour interval for nonexcavation requests.

16. Salzsieder Construction complied with SDCL 49-7A-5.

17. SDCL 49-7A-10 reads as follows:

49-7A-10. Liability for damage to underground facility. Compliance with this chapter and the rules promulgated pursuant thereto does not excuse a person from acting in a careful and prudent manner nor does compliance with this chapter and the rules promulgated pursuant thereto affect any civil remedies otherwise provided by law for personal injury or for property damage except as specifically provided in this chapter. If information requested pursuant to statute or rule, is provided within the time specified and if the information provided sufficiently identifies the location of the underground facilities in accordance with § 49-7A-8 or any rule promulgated pursuant to § 49-7A-8, any excavator damaging or injuring the underground facilities is strictly liable for all damage proximately caused thereby.

18. Salzsieder Construction has no liability under this statute under the circumstances.

19. Further, under SDCL 49-7A-6.1 the operator is not to be billed when the location of excavation on the notice differs from location of the operator's facility.

49-7A-6.1. Operator not to be billed when location of excavation on notice differs from location of operator's facility. No operator may be billed for the costs of any notification of excavation if the location of the excavation described in the notice is different than the one call center's record of the description of the location of the operator's underground facilities.

Source:

20. Additionally, the obligation of marking is the operator's obligation:

49-7A-8. Location of underground facilities--Marking. An operator shall, upon receipt of the notice, advise the excavator of the location of underground facilities in the proposed excavation area by marking the location of the facilities with stakes, flags, paint, or other clearly identifiable marking within eighteen inches horizontally from the exterior sides of the underground facilities. The board shall promulgate rules, pursuant to chapter 1-26, to establish the response time for operators to mark the underground facilities. The response time shall be no later than forty-eight hours after the receipt of the notice, excluding Saturdays, Sundays, and legal holidays of the state or the excavation start time provided by the excavator, whichever is later. The response time may be less than forty-eight hours for emergency or subsequent inquiries to the original locate request and may be longer than forty-eight hours for nonexcavation requests. Excavators shall maintain a minimum horizontal clearance of eighteen inches between a marked underground facility and the cutting edge of any mechanical equipment. If excavation is required within eighteen inches, horizontally, the excavator shall expose the facility with hand tools or noninvasive methods approved pursuant to rule and shall protect and support the facility prior to further excavation with mechanical equipment.

21. The failure of the operator to timely and accurately locate absolves the excavator of liability.

49-7A-9. Failure to provide timely location markings--Inadequate markings--Liability. If location markings requested by an excavator are not provided within the time specified by § 49-7A-8 or any rule promulgated pursuant to § 49-7A-8, or if the location markings provided fail to identify the location of the underground facilities in accordance with statute and rule, any excavator damaging or injuring underground facilities is not liable for such damage or injury except on proof of negligence.

22. If the cable had been properly located, this would not have occurred.

Dated this 20th day of October, 2014

A handwritten signature in black ink, appearing to read 'Milan Salzieder', written over a horizontal line.

Milan Salzieder
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