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CODY L. HONEYWELL

August 19, 2021

WARREN W. MAY 1920-2018
THOMAS C. ADAM 1935-2019
BRENT A. WILBUR 1949-2006

TELEPHONE
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Pennington County Sheriff's Office
Attn: Civil Process Department
300 Kansas City Street #100
Rapid City, South Dakota 57701

RE: State of South Dakota (One-Call Board) v. Swiftec, Inc.
MAGT File: 7525.14

Dear Sheriff:

Enclosed please find one copy each of the cover letter and Complaint and two copies of the Summons. The cover letter, Complaint, and one copy of the Summons is to be served upon Swiftec, Inc., at the following address: 1714 Creek Drive, Rapid City, South Dakota 57703. If the President Travis Swift or Vice President Aaron Meyers is present at the principal place of business, they should be served. If either is not conveniently found at the principal place of business, please serve upon whoever is in charge of the principal place of business during normal business hours.

Please remit a bill, along with the second copy of the Summons, to this office for your help in this matter, and I will assure you are promptly paid.

Sincerely,

MAY, ADAM, GERDES & THOMPSON LLP



CODY L. HONEYWELL
CLH | jrw

Enclosures

MAY, ADAM, GERDES & THOMPSON LLP
503 SOUTH PIERRE STREET • P.O. Box 160
PIERRE, SOUTH DAKOTA 57501-0160

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VIA PERSONAL SERVICE

Swiftec, Inc.

Attn: Swiftec Swift, Registered Agent; Travis Swift, President; or Aaron Meyers, Vice President
1714 Creek Drive
Rapid City, South Dakota 57703

RE: State of South Dakota (One-Call Board) v. Swiftec, Inc.
MAGT File: 7525.14

Dear Sirs:

Enclosed please find a Summons and Complaint. If you agree to pay the \$2,500.00 fine, I will request the Court dismiss this Complaint without any interest, additional fees, or costs. Please contact me with any questions. You may send the \$2,500.00, payable to **South Dakota One Call Board**, to my attention at 503 South Pierre Street, P.O. Box 160, Pierre, South Dakota 57501-0160.

Sincerely,

MAY, ADAM, GERDES & THOMPSON LLP



CODY L. HONEYWELL
CLH | jrw

Enclosures

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503 SOUTH PIERRE STREET • P.O. Box 160
PIERRE, SOUTH DAKOTA 57501-0160

STATE OF SOUTH DAKOTA)
)ss
COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA, Plaintiff, vs. SWIFTEC, INC., Defendant.	51CIV21- COMPLAINT
---	----------------------------------

Plaintiff State of South Dakota, by and through its undersigned Counsel, for its Complaint states as follows:

1. Plaintiff, the State of South Dakota (“Plaintiff”) brings this action by and through the South Dakota One Call Board (“One-Call”), an agency of the State of South Dakota created by SDCL 49-7A-2.

2. Defendant Swiftec, Inc., (“Defendant”) is a South Dakota Corporation with its principal place of business located at 1714 Creek Dr Rapid City, SD 57703. Swiftec Swift is its Registered Agent at the same address. Pursuant to its annual report for 2021, Travis Swift is its President, and Aaron Meyers is its Vice President.

3. This action is brought pursuant to SDCL 49-7A-28 to recover civil penalty assessed against Defendant by the South Dakota One-Call Board.

4. One-Call was established by the legislature to provide a mechanism through which operators of underground utility facilities shall be notified of plans to excavate. After notification, the operators must mark the underground facilities. The mechanism was established to prevent injuries and property damage. SDCL 49-7A-2. One-Call promulgated rules and procedures pursuant to SDCL 49-7A-4 to regulate the notification process located at ARSD Article 20:25.

5. Specifically, Excavators shall maintain a minimum horizontal clearance of eighteen inches between a marked underground facility and the cutting edge of any mechanical equipment. SDCL 49-7A-8. Excavators shall immediately notify the one-call notification center and, if known, the operator of the facility of the damage, dislocation, or disturbance if an underground facility is damaged, dislocated or disturbed during excavation work, SDCL 49-7A-12.

6. One-Call, pursuant to SDCL 49-7A-17, has the authority to receive complaints against persons who violate provisions of SDCL chapter 49-7A and rules promulgated by One-Call and may, pursuant to SDCL 49-7A-18 and 49-7A-19, assess civil penalties against persons found to have violated these laws.

7. On September 2, 2020, pursuant to SDCL 49-7A-17, One-Call received a Complaint filed by Montana Dakota Utilities Co., against Defendant for hitting a two-inch (2") plastic line and failing to notify the One Call Board or Montana-Dakota Utilities Co.

8. The Defendant failed to answer the Complaint after notice was given pursuant to SDCL 49-7A-23 and 49-7A-24.

9. Pursuant to SDCL 49-7A-22, a five-member panel was appointed by the Chairman of One-Call. Based on the information available to it, the panel found probable cause existed to believe violations of SDCL 49-7A-5 and SDCL 49-7A-8 occurred.

10. A copy of the One-Call Panel's recommendation was sent to the parties on November 25, 2020, pursuant to SDCL 49-7A-27. Defendant, however, failed to respond to the recommendations. Defendant's failure to respond, and failure to request a hearing, constitutes acceptance of the Panel's recommendation per SDCL 49-7A-27.

11. The Panel assessed civil penalties against Defendant in the total amount of Two Thousand Five Hundred Dollars (\$2,500.00) with One Thousand Five Hundred Dollars (\$1,500.00) suspended if Defendant met the conditions contained in the One-Call decision. The complete One-Call decision is attached hereto as Exhibit A.

12. One-Call served its final decision on Defendant via mail. Time for Defendant to appeal the decision of One-Call has expired according to SDCL 1-26-31.

13. Defendant failed to meet conditions 2, 4, and 5 in the Order, and Defendant now owes Two Thousand Five Hundred Dollars (\$2,500.00) in civil penalties.

14. One-Call made a written demand to Defendant for payment of the civil penalties as required by SDCL 49-7A-33. The demand was served on Defendant via mail. The demand letter is attached hereto as Exhibit B. More than thirty (30) days have elapsed since the demand was sent, and Defendant has failed to pay the prescribed civil penalties.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

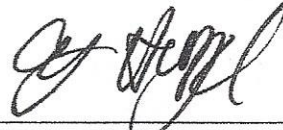
1. For monetary judgment in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) plus Plaintiff's costs, disbursements, and statutory interest to the extent allowed by law.

2. For such other and further relief as the Court may deem just and proper.

Dated this 19 day of August, 2021.

MAY, ADAM, GERDES & THOMPSON LLP

BY: _____



BRETT KOENECKE
CODY L. HONEYWELL
Attorneys for State of South Dakota
503 South Pierre Street
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Pierre, South Dakota 57501-0160
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BEFORE THE SOUTH DAKOTA
ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT
FILED BY MONTANA DAKOTA
UTILITIES, RAPID CITY, SD AGAINST
SWIFTEC, INC., RAPID CITY, SD, FOR
AN INCIDENT OCCURRING ON AUGUST
24, 2020 AT 2003 PROVIDER BLVD,
RAPID CITY, SD.

**ORDER ADOPTING ENFORCEMENT
PANEL RECOMMENDATION TO THE
SOUTH DAKOTA ONE CALL BOARD**

OC20-058

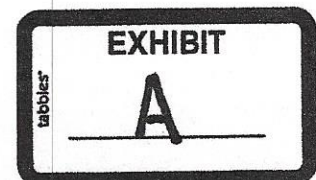
On September 2, 2020, the South Dakota One Call Board received a Complaint filed by Montana Dakota Utilities Co. (herein "Claimant"), against Swiftec, Inc. (herein "Respondent"), for an incident occurring on August 24, 2020, at 2003 Provider Blvd, Rapid City, SD. The Complaint alleges violations of SDCL 49-7A-8 and 49-7A-12 when Respondent was hit a two-inch (2") plastic line putting a nick in the pipe and breaking the tracer wire and repaired the tracer wire with their own green wire. Claimant alleges Respondent was not going to notify 811 or the utility company of the damage and that Site Works Specialist notified the proper parties of the damage and stated that Respondent was going to bury the damage. Claimant alleges that Respondent refused to make the calls or provide the locate ticket number when asked.

A copy of the Complaint was sent to Respondent on September 9, 2020. The deadline to respond was September 29, 2020. Respondent has not answered the Complaint as of October 8, 2020.

On October 8, 2020, the Enforcement Panel (herein "Panel") convened pursuant the authority present in SDCL 49-7A. The Panel does find probable cause that an unintentional violation of SDCL 49-7A-8 and an intentional violation of SDCL 49-7A-12 occurred.

Based upon the evidence presented in the filings, the Panel recommends a penalty of \$1,000 with \$750 suspended for the violation of SDCL 49-7A-8 and a penalty of \$1,500 with \$750 suspended for the violation of SDCL 49-7A-12 for a total penalty of \$2,500 with \$1,500 suspended upon the conditions listed below. The conditions for the suspended penalty are as follows:

1. Respondent must not be found guilty of a One-Call violation within 12 months of the Board Order,



2. The penalty payment of **\$1,000** must be made to **South Dakota One Call Notification Board, P.O. Box 187, Rapid City, SD 57709.**
3. Respondent must attend a Damage Prevention meeting in 2021.
4. Respondent must conduct an in-house safety meeting to discuss South Dakota One Call laws. Detail of the discussion material, date, and length of the meeting along with printed and signed names of attendees will be submitted to the Executive Director of South Dakota One Call within thirty (30) days of the Board Order being issued.
5. Respondent will arrange a face-to-face meeting with Claimant to review the damage, dangers while working around utilities, and safe practices. This meeting is to take place within thirty (30) days of the Board Order being issued.

If any of the above conditions are not met, the suspended penalty (**\$1,500**) becomes immediately due and payable to **South Dakota One Call Notification Board, P.O. Box 187, Rapid City, SD 57709.**

The Panel recommends the South Dakota One Call Board accept its findings and recommendations herein. If either party to this Complaint disagrees or objects to the recommendations or findings herein, a hearing may be requested. To request a hearing, a party must reply within twenty (20) days from the date of service of this notice. Failure to request a hearing is considered acceptance of the recommendations and findings herein.

On November 25, 2020, the Panel's recommendation was sent to the parties to this action. The parties did not request an evidentiary hearing. The Board reviewed the Panel's recommendations at its February 19, 2021 meeting pursuant to SDCL 49-7A-27. The Panel's recommendation was approved by the Board. It is now, therefore:

ORDERED, that the South Dakota One Call Board adopts the recommendations of the Panel as a final resolution of this Complaint. The Panel's findings are attached hereto and shall be considered fully incorporated herein.

ORDERED, that if the penalty is not paid, that the Board shall pursue any rights it has under the law regarding collections.

The South Dakota One Call Notification Board has jurisdiction over this matter pursuant to SDCL 1-26 and 49-7A and ARSD Article 20:25, specifically SDCL 49-7A-5, 49-7A-18, 49-7A-20, 49-7A-22, and 49-7A-26.

Dated this 24th day of February, 2021.

BY ORDER OF THE SOUTH DAKOTA
ONE CALL NOTIFICATION BOARD:

DocuSigned by:
Fay Sandman
91AEC86AEFF9499...
