

Formstack Submission For: **South Dakota One Call Reply Form**

Submitted at 11/20/23 3:47 PM

Complaint Docket Number:	OC23-004
Reply filed on behalf of (company name):	LL & Sons Excavating, Inc.
Contact Person:	Loren Beld
Phone Number:	(605) 881-8168
Ext:	
Name or Company Name:	LL & Sons Excavating, Inc.
Street Address or PO Box:	PO Box 43 Hazel, SD 57242
Fax:	(605) 628-1361
Email:	loren@llsons.net
Date:	Nov 11, 2023
Were you previously aware of these allegations?:	Yes
Provide detail including whom you spoke with.:	<p>We did not receive notice from Midco that the line was broken (excavator was unaware of broken line.) We were first made aware when on 7/14/23 a neighbor told us he was out of service for a few hours the night before.</p> <p>We received invoice 01-23-047 dated 7/24/23 from Midco for \$16,022.51 for damages.</p> <p>Sent letter on 8/23/23 to Midco requesting demand letter showing facts of and legal basis for claim and evidence of the loss, as the lines were not accurately</p>

marked.

No demand letter was received as stated by Midco.
Received notice Midco was filing suit on 10/16/23.

Do you believe the statutes listed (if any) by the complainant were violated?:

No

Why or why not?:

None of the statutes listed were violated.
SDCL 49-7A-8: Broken line was approx 40" away from locate markings.
2 lines were exposed by hydro-excavating 24" on either side of marking. These 2 lines were approximately 2' deep and accurately located. The broken line was 40" west and 5' deeper than the 2 exposed lines. See attached photos.

SDCL 49-7A-12 Excavator was unaware of the broken line. The hole was dug to find out how deep the water table was for the next day's work. We backfilled the hole for safety, and left for the day. We were not contacted by Midco throughout the 2 days. When we were made aware of the damage on 7/14/23, we notified the one call center (ticket 2319517838). There was no attempt to conceal damage; we were simply not aware of the damage and backfilled the hole for safety.
20:25:03:05.02 Markings and flags were preserved and still visible, as shown in the attached pictures taken after the line was damaged.

Do you dispute the alleged violation of SD One Call statute or rule occurred?:

Yes

If yes, what specifically do you dispute?:

See above comments.

Do you dispute the complainant's statements

Yes

regarding the intentional or unintentional nature of the alleged violation?:

If yes, please explain.:

We agree with Midco's statement that the violation was not intentional. However, their statement regarding prior cuts should not be considered. If they are, please also consider that LL & Sons has approximately 4 instances of unmarked/inaccurate markings by Midco in the past year alone, and will be submitting complaints for these as time permits.

Was a locate requested from SD One Call?:

Yes

Locate ticket #:

2317805875, respot 2319215026

Start date on ticket:

Jun 29, 2023

Start time on ticket:

10:45 AM

Copy of the locate ticket:

[View File](#)

If no, please explain why no locate request was made.:

Did excavation begin before the start date / time on the ticket?:

No

Was a minimum horizontal clearance of 18 inches maintained between a marked facility and mechanical equipment? :

Yes

Were buried facilities exposed by hand or non-

Yes

invasive equipment prior to excavation? :

Were facilities marked? : No

Was the marking complete prior to the start time on the ticket?: No

Was the excavation site pre-marked with white paint?: N/A

Was the facility marked accurately (within 18 inches)?: No

Was there reasonable care to maintain locate marks for the life of project?: Yes

Did the complainant correctly describe the type of facility involved?: No

Provide details: coax cable is the type of cable broken.

Did the complainant correctly describe the damages that resulted from the alleged violation?: No

Provide details: Midco had locate marks, but they were only accurate for 1 line. We exposed one line by hydro excavating, and hydro excavated 24" on either side of Midco's marks. The broken line was 40" from the locate marks, a violation of SDCL 49-78-A. Midco alleges that "while on site making repairs, the

excavator again cut Midco's line and acknowledge he had hit Midco's cable 'again'." This statement is completely and blatantly false.
Midco has not submitted any documentation that the line was cut twice, because it was not.

Was the one-call notification center immediately notified of the damage, dislocation, or disturbance?:

Yes

File:

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If No, why not?:

Was the operator of the facility immediately notified of the damage, dislocation, or disturbance?:

No

If No, why not?:

Excavator was unaware of the broken line on 7/13/23; therefore did not call in a damage ticket at that time. The hole was dug to find out how deep the water table was for the next day's work. We backfilled the hole for safety, and left for the day. We were not contacted by Midco throughout the 2 days. When we were made aware of the damage on 7/14/23 by a neighbor, we notified the one call center (ticket 2319517838).

Was there an escape of any flammable, toxic, or corrosive gas or liquid?:

No

If Yes, but if 911 was not called, or if you don't know, explain why.:

Did the complainant correctly describe the

Yes

damages that resulted from the alleged violation?:

If no, provide details.:

Were damages on public right of way or private property?:

Private

Did complainant correctly describe how operator service was affected?:

Yes

Provide Details:

Service was disrupted. Per the neighbor, they were out of service for a couple of hours.

Was anyone injured as a result of facility damage?:

No

If yes, provide details.:

Length of hospitalization:

Were there fatalities?:

No

If yes, provide details.:

Other information regarding injuries or damages:

Describe your plans and procedures to ensure compliance with SD One Call statutes and rules.:

We will continue to practice safe procedures. We hydro excavate within 18-24" and 4' deep of the locate marks. We rely on the operators to accurately locate their lines, and if this is not done correctly, we do the best we can.

Has a complaint been filed against you in the past for SD One Call violations?:

No

If yes, when was it filed?:

Please provide any additional information to support your position.:

A brief overview:

On 7/13/2023, LL & Sons was digging at 1394 S Lake Dr. We excavated a hole to determine the water table for the next day's work. A hydro-vac was used to excavate 24" on either side of the locate marks, which is exposed 2 lines. (see photo 6 - Midco's photo - which shows where hydro excavating was done. An excavator was used to complete excavation. Once the water table was determined, the excavator (unaware that a line was broken), backfilled the hole and left for the day. Midco was made aware of the damage on 7/13/23, but did not notify LL & Sons.

On 7/14/2023, when the excavator returned to the job site, he was made aware of the damage by a neighbor. A damage locate ticket was called in at that time.

Our attached photos 1, 4 and 5 show the damaged line is approximately 40" from the markings.

Midco's submitted photos only show that there are markings on the ground, which we do not dispute.

The cable broken was not marked accurately within 18 inches.

Attachment Information:
File names should not include symbols. Example:(\$, &, *, %,) etc.:

[View File](#)