



Dustin Johnson, Chair
Steve Kolbeck, Vice Chair
Gary Hanson, Commissioner

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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September 8, 2010

Kingsbury County Clerk of Courts
Linda Poppen
PO Box 176
DeSmet, SD 57231-0176

Re: State of South Dakota v. Mark Seifkes d/b/a S.P.O.T
Civ10-86

Dear Ms. Poppen:

Enclosed for filing please find Plaintiff's Application for Default Judgment along with an Affidavit in support of said Application. Additionally, please find the Certificate of Service specifying all documents sent to the Defendant.

A hearing on this matter is scheduled for October 18, 2010 at 10:00 am with Judge Gienapp. The Defendant has not participated in any way thus far, and I suspect he will not appear at the Default Judgment Hearing. If possible, to facilitate the efficient handling of this matter, I would like to appear telephonically. I enclosed a proposed Order for Judge Gienapp and your signature in the event telephonic participation is possible. Additionally, I enclosed an envelope and request you return a copy should the proposed Order be signed. Thank you for considering my request.

Please contact me with any questions and advise whether telephonic participation in this matter is possible. Thank you.

Sincerely,

Kara Semmler

Enc

THE STATE OF SOUTH DAKOTA,	*	CIV 10-86
	*	
Plaintiff,	*	
	*	
vs.	*	
	*	APPLICATION FOR
	*	DEFAULT JUDGEMENT
MARK SEIFKES d/b/a S.P.O.T.,	*	
	*	
	*	
Defendant.	*	

Plaintiff, the state of South Dakota by and through the Public Utilities Commission (“Plaintiff” or “Commission”) an agency of the State of South Dakota, hereby makes application to the Court for entry of judgment by default in the above-entitled action pursuant to SDCL 15-6-55(b).

1. The Commission commenced this action on July 20, 2010. The Kingsbury County Sheriff personally serviced the Summons and Complaint on Mark Seifkes, d/b/a S.P.O.T. (herein “Seifkes”) on July 21, 2010. The Sheriff’s return of service is attached as Exhibit A.
2. Defendant has filed neither an Answer nor any other pleading in this case.
3. This action was originally brought pursuant to SDCL 49-7A-28 to recover the civil penalty assessed against Defendant by the South Dakota One-Call Notification Board (“One-Call”).
4. One-Call (“One-Call”) is a board established by SDCL 49-7A-2.
5. 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.

6. On March 3, 2009, pursuant to SDCL 49-7A-17, One-Call received a complaint filed by Larry Englerth of Sioux Falls, SD.

7. Defendant failed to respond to said Complaint after notice was given pursuant to 49-7A-23 and 24. A five member panel was, therefore, appointed by the Chairman of One Call pursuant to SDCL 49-7A-22 to determine whether probable cause existed to believe a violation of SDCL 49-7A-2 occurred as alleged in the Complaint. The panel found the Defendant guilty of the alleged violation.

9. A copy of the One-Call panel's recommendations was sent to the parties pursuant to SDCL 49-7A-27. Defendant, however, failed to respond to the recommendations. His failure to respond, and failure to request a hearing, constitutes acceptance of the panel's recommendation per SDCL 49-7A-27

10. The panel's recommendation included a suspended fine based on the Defendant's compliance with at least one of two conditions. Failure to comply with at least one of the two listed conditions, however, resulted in civil penalties against Defendant in the total amount of Six Thousand Dollars (\$6,000). A complete copy of the recommendations is incorporated into the One Call Order attached as Exhibit B.

11. The Order, incorporating the conditions, was served on Defendant. See Sheriff's return of service attached hereto as Exhibit C. The Defendant neither appealed the One-Call decision nor met the conditions in the Order, and accordingly, owes \$6,000 in civil penalties.

12. One-Call made a written demand to Defendant for payment of the civil penalties as required by SDCL 49-7A-33. The demand was personally served on Defendant June 10, 2010.

13. At the request of One-Call, the Commission brought an action in this court against Defendant to recover such penalty in accordance with SDCL 49-7A-28.

14. Defendant has neither paid anything to the Commission nor One-Call in satisfaction of the \$6,000 in civil fines levied by One-Call nor given any indication to the Commission or One-Call that he intends to pay the fines.

WHEREFORE, Plaintiff requests that the Court enter judgment by default against Defendant as follows:

1. For a monetary judgment in the amount of \$6,000 against Defendant.

Dated this 8th day of September, 2010



Kara C. Semmler
Special Assistant Attorney General
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501
Ph (605) 773-3201
Fax 866-757-6031
Attorney for Plaintiff,
South Dakota Public Utilities Commission

261100045

SHERIFF'S RETURN AND DAY BOOK ENTRY

8061

STATE OF SOUTH DAKOTA, COUNTY OF KINGSBURY, SS.

I, the undersigned, sheriff within and for the said County of Kingsbury, hereby certify and return; that on the 21st day of July, 2010, in said county and state, I did then and there serve the annexed Summons & Complaint

on Mark Seifkes d/b/a S.P.O.T. the party named therein, by then and there delivering to and leaving with him a full, true and correct copy thereof.

Table with 2 columns: Fee Item, Amount. Includes Summons (\$25.00), Complaint (\$X), Total Fees (\$26.00).

ENTRY section containing case details: Plaintiff (The State of South Dakota), Defendant (Mark Seifkes d/b/a S.P.O.T.), Attorney (Kara C. Semmler), and dates received/served/returned.

Dated at DeSmet, South Dakota, this 21st day of July, 2010. By Wade Hoefert, Sheriff of Kingsbury County.

RECEIVED JUL 23 2010 SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

Exhibit A

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE
COMPLAINT AGAINST
MARK SEIFKES dba S.P.O.T.

)
)
)
)

ORDER
OC09-002

On March 3, 2009, the South Dakota Public Utilities Commission received a complaint from Larry Englerth against Mark Seifkes dba S.P.O.T. Mr. Seifkes did not reply to the complaint alleging he failed to join the One Call System per SDCL 49-7A-2.

The Enforcement Committee of the South Dakota One Call Board met on June 11, 2009, and determined sufficient probable cause existed to find a violation of SDCL 49-7A-2 occurred in docket OC09-002.

The committee recommended a penalty of one thousand dollars (\$1,000.00) pursuant to SDCL 49-7A-18 and five thousand dollars (\$5,000.00) pursuant to SDCL 49-7A-19 for a total fine of six thousand dollars (\$6,000.00). The entire six thousand dollar (\$6,000) penalty is suspended on the following conditions:

1. Within thirty days of the issuance of an order in Complaint OC09-002, Mark Seifkes dba S.P.O.T. fully complies with SDCL 49-7A by completing membership in the South Dakota One Call System and that he fully complies with SDCL 49-7A and ARSD 20:25 for twelve months following acceptance or resolution of Complaint OC09-002, or
2. Within thirty days of the issuance of an order in Complaint OC09-002, Mark Seifkes dba S.P.O.T. arrange with a third party, such as the City of DeSmet, to assume responsibility for receipt of excavation notifications marking of the sewer line operated by him.

The parties to docket OC09-002 were provided notice of the Enforcement Committee decision. Under SDCL 49-7A-27 failure to respond to said notice is considered acceptance of the Enforcement Committee recommendation and a right to a hearing is waived. Both parties accepted the Enforcement Committee decision. It is therefore

ORDERED, that the terms and conditions of the Enforcement Committee Action Agreement shall be incorporated into this Order by reference and attached hereto, the same as if it was fully recited herein and shall as such be fully binding upon the parties to it; and it is

FURTHER ORDERED, that the docket in this matter shall be closed.

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

Exhibit B

Dated at Pierre, South Dakota, this 21st day of July 2009.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.



Kara Semmler, PUC Staff Attorney

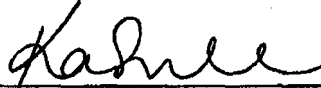
Dated: July 21, 2009

BY ORDER OF THE SD ONE-CALL BOARD:



Bleau LaFave, Chairman

Under the Authority and on Behalf of the Chairman



Kara Semmler, PUC Staff Attorney

ENFORCEMENT COMMITTEE ACTION
OC09-002
Larry Englerth v. Mark Seifkes dba S.P.O.T.

FINDINGS:
OC09-002

Alleged Violation of SDCL 49-7A-2 Establishment of One-Call Notification Board

Allegation is made by Larry Englerth that Mark Seifkes dba S.P.O.T., an operator, failed to join the South Dakota One Call notification center as required by SDCL 49-7A-2.

Mark Seifkes dba S.P.O.T. did not dispute the allegation.

In reviewing the complaint filed by Larry Englerth, the committee determined the following:

Mark Seifkes failed to join the South Dakota One Call System as statutorily required.

Based on the information noted above, the Committee found there is probable cause to find that Mark Seifkes dba S.P.O.T. violated SDCL 49-7A-2 by failing to become a member of the South Dakota One Call System as required by SDCL 49-7A-2.

The Committee further found, due to Mark Seifkes' failure to comply with a previously filed complaint (OC07-006) he intentionally violated, and remains out of compliance with SDCL 49-7A-2.

RECOMMENDATION
OC09-002

INTENTIONAL VIOLATION OF SDCL 49-7A-2:

The Committee found probable cause to conclude Mark Seifkes dba S.P.O.T. intentionally violated SDCL 49-7A-2 by his continued failure to join the South Dakota One Call System as required by SDCL 49-7A-2.

PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-18 and SDCL 49-7A-19:

The committee recommends a penalty of one thousand dollars (\$1,000.00) pursuant to SDCL 49-7A-18 and five thousand dollars (\$5,000.00) pursuant to SDCL 49-7A-19 for intentionally remaining out of statutory compliance, for a total fine of six thousand dollars (\$6,000.00). The entire six thousand dollar (\$6,000) penalty is suspended on the following conditions:

1. *Within thirty days of the issuance of an order in Complaint OC09-002, Mark Seifkes dba S.P.O.T. fully complies with SDCL 49-7A by completing membership in the South Dakota One Call System and that he fully complies with SDCL 49-7A and ARSD 20:25 for twelve months following acceptance or resolution of Complaint OC09-002, or*
2. *Within thirty days of the issuance of an order in Complaint OC09-002, Mark Seifkes dba S.P.O.T. arrange with a third party, such as the City of DeSmet, to assume responsibility for receipt of excavation notifications marking of the sewer line operated by him.*

RECEIVED

SHERIFF'S RETURN

JUL 30 2009

AND DAY BOOK ENTRY SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

7709

STATE OF SOUTH DAKOTA, COUNTY OF KINGSBURY, SS.

I, the undersigned, sheriff within and for the said County of Kingsbury, hereby certify and return; that on the 27th day of July, 20 09, in said county and state, I did then and there serve the annexed Letter & Order

on Robin Seifkes for husband Mark Seifkes the party named therein, by then and there delivering to and leaving with her a full, true and correct copy thereof.

SHERIFF'S FEES		ENTRY		
Summons	\$ _____	SD Public Utilities Commission		
Garnishee Summons	\$ _____			Plaintiff.
Complaint	\$ _____		-vs-	
Affidavit	\$ _____	Mark Seifkes dba S.P.O.T.		
Warrant of Attachment	\$ _____			Defendant.
Notice	\$ _____	Kara Semmler - Staff Attorney		
Order	\$ 25.00	500 East Capitol Ave. Pierre, SD 57501-5070		
Petition	\$ _____	ATTORNEY'S ADDRESS		
Levy	\$ _____	07-22-09	07-27-09	07-29-09
Subpoena	\$ _____	DATE RECEIVED	DATE SERVED	DATE RETURNED
Undertaking	\$ _____	Letter & Order		
Demand	\$ _____	KIND OF PROCESS		
Execution	\$ _____	Third J.C.		
Other	\$ X	IN WHAT COURT		
.....Copies	\$ _____	Steven A. Strande		
Mileage	\$ 1.00	BY WHOM SERVED		
Total Fees	\$ 26.00	Robin Seifkes for husband Mark Seifkes		
		UPON WHOM PAPERS WERE SERVED		

Dated at DeSmet, South Dakota, this 27th day of July, 20 09

Sheriff of Kingsbury County

By Steven A. Strande 12-15 Deputy

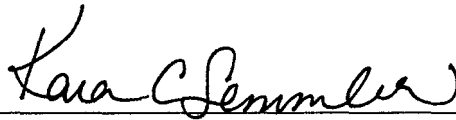
THE STATE OF SOUTH DAKOTA,	*	CIV 10-86
	*	
Plaintiff,	*	
	*	
vs.	*	
	*	AFFIDAVIT IN SUPPORT
	*	OF APPLICATION FOR
	*	DEFAULT JUDGEMENT
MARK SEIFKES d/b/a S.P.O.T.,	*	
	*	
	*	
Defendant.	*	

Kara Semmler, Special Assistant Attorney General and attorney for the Plaintiff, the State of South Dakota, states the following pursuant to SDCL 15-6-55(a) in support of the Plaintiff's Application for Default Judgment:

1. Plaintiff, the state of South Dakota brings this action by and through the Public Utilities Commission ("Commission") an agency of the State of South Dakota.
2. The Commission commenced this action by personal service upon Defendant, Mark Seifkes d/b/a S.P.O.T. on July 21, 2010. The sheriff's return of service is attached as Exhibit A.
3. The Summons states: "you are required to answer the Complaint....within 30 days after service of this Summons and Complaint upon you, exclusive of the day of such service. You are further notified that if you fail to answer the Complaint within the time aforesaid, judgment by default may be entered against you as requested in the Complaint."
4. To the knowledge of affiant, defendant has not served or filed an Answer or any other pleading in this case upon the Court or Commission.

5. Defendant has not paid anything to the Commission or One Call in satisfaction of the \$6,000 in civil fines levied by One Call nor given any indication to the Commission or One Call that he intends to do so.

Dated this 8th day of September, 2010



Kara C. Semmler
Special Assistant Attorney General
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501
Ph (605) 773-3201
Fax 866-757-6031
Attorney for Plaintiff,
South Dakota Public Utilities Commission

261100045

**SHERIFF'S RETURN
AND DAY BOOK ENTRY**

8061

STATE OF SOUTH DAKOTA, COUNTY OF KINGSBURY, SS.

I, the undersigned, sheriff within and for the said County of Kingsbury, hereby certify and return;
that on the 21st day of July, 20 10, in said county and state,
I did then and there serve the annexed Summons & Complaint

on Mark Seifkes d/b/a S.P.O.T. the party named therein,
by then and there delivering to and leaving with him a full, true and correct copy thereof.

SHERIFF'S FEES		ENTRY		
Summons	\$ 25.00	The State Of South Dakota		
Garnishee Summons	\$	Plaintiff.		
Complaint	\$ X	-vs-		
Affidavit	\$	Mark Seifkes d/b/a S.P.O.T.		
Warrant of Attachment	\$	Defendant.		
Notice	\$	Kara G. Semler -Special Assistant Attorney		
Order	\$	General		
Petition	\$	ATTORNEY RECEIVED FROM		
Levy	\$	% SD Public Utilities Commission		
Subpoena	\$	500 East Capitol Ave., Pierre, SD 57501		
Undertaking	\$	ATTORNEY'S ADDRESS		
Demand	\$	7-21-10	7-21-10	7-21-10
Execution.....	\$	DATE RECEIVED	DATE SERVED	DATE RETURNED
Other.....	\$	Summons & Complaint		
.....Copies	\$	KIND OF PROCESS		
Mileage.....	\$ 1.00	Third J.C.		
Total Fees	\$ 26.00	IN WHAT COURT		
		Wade Hoefert		
		BY WHOM SERVED		
		Mark Seifkes d/b/a S.P.O.T.		
		UPON WHOM PAPERS WERE SERVED		

Dated at DeSmet, South Dakota, this 21st day of July, 20 10

By Wade Hoefert 42-13
Sheriff of Kingsbury County Wade Hoefert Deputy

RECEIVED

JUL 23 2010

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

STATE OF SOUTH DAKOTA
COUNTY OF KINGSBURY

IN CIRCUIT COURT
THIRD JUDICIAL DISTRICT

THE STATE OF SOUTH DAKOTA,

*

CIV 10-86

*

Plaintiff,

*

vs.

*

*

CERTIFICATE OF SERVICE

*

*

MARK SEIFKES d/b/a S.P.O.T.,

*

*

Defendant.

*

*

Kara C. Semmler, Attorney for Plaintiff, South Dakota Public Utilities Commission, hereby certifies that on the 8th day of September, 2008, she mailed by United States certified mail, postage prepaid and return receipt requested, a true and correct copy of the Application for Default Judgment, Affidavit in Support of Application for Default Judgment, Notice of Hearing on Application for Default Judgment and proposed Default Judgment and Order granting motion in the above captioned action to the following at their last known addresses, to wit:

Mark Seifkes dba S.P.O.T
305 Hwy 14E
DeSmet, SD 57231

Dated at Pierre, South Dakota, this 8th day of September, 2010.



Kara C. Semmler
Special Assistant Attorney General
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501
ph. (605) 773-3201
fax (605) 773-3809

Attorney for Plaintiff, South Dakota Public
Utilities Commission

