

Re: Docket OC99-001

11/15/99 – Letter from Minnehaha Community Water, Corp.

12/13/99 – Order for and Notice of Hearing

12/13/99 – Letter to Hughes County Sheriff's Office

12/14/99 – Letter to Jerry May, AAA Reporting – May Company

12/22/99 – Letter to Rick Schaeffer, R and G Construction

12/29/99 – Letter from R and G Construction

01/03/00 – Letter to John H. Buss, Minnehaha Community Water, Corp.

01/03/00 – Letter to Greg Mathiowetz, R and G Construction

01/04/00 – Hughes County Sheriff's Office Invoice

01/04/00 – Sheriff's Return

01/13/00 – Response from R and G Construction

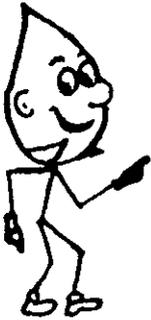
01/13/00 – Letter from One Call Notification Board to R and G Construction

01/25/00 – Transcript of Hearing held 1/21/00 - *exhibits 1, 2, 3, 4, A, B, D*

02/14/00 – Findings of Fact and Conclusions of Law and Order

02/22/00 – Letter to Jerome B. Lammers and Ronald G. Schmidt

02/22/00 – Notice of Entry of Order



MINNEHAHA COMMUNITY WATER, CORP.

47381 248TH STREET
DELL RAPIDS, SD 57022-5305
TELEPHONE (605) 428-3374 or (605) 529-5799
FAX (605) 428-3395

RECEIVED

NOV 15 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

November 8, 1999

South Dakota One Call
% Larry Englerth, Executive Director
1012 No. Sycamore Ave.
Sioux Falls, SD 57103

Dear Larry and S.D. One Call Board Members:

I am writing with regard to a chain of events, which took place in late July and early August of 1999. The location of these occurrences was a Minnehaha County grading project on Six Mile Road, east of Sioux Falls.

The first party involved was R & G Construction, a road grading contractor out of Marshall, Minnesota with Doug Weber as their grading Superintendent on this project. Dan Buseth was the job superintendent on this project for Minnehaha Community Water, Corp.

We believe there were numerous blatant violations of the S.D. One Call law. We are asking the South Dakota One Call Board to vigorously pursue the contractor and assess the applicable penalties for each occurrence.

The events are as follows:

On July 7, 1999, we received a One Call ticket #991880338 which requested a meet with utilities on July 12, 1999 at the intersection of Highway 38 and Six Mile Road. All the Utilities contacted had a representative at the site, but the contractor failed to show up at the assigned time or place. Due to lack of direction by the excavator as to specific areas to be located along the 5½-mile project and not knowing where R & G might begin work, MCWC's locator did not locate any facilities that day.

Our locator went to the job site at a later date and found that the contractor had already started grading. The mile that the contractor was grading was flagged that day.

Our crew moved on to the project to begin relocating pipeline near the end of July. One of the first few days, Doug Weber confronted Dan Buseth and asked Dan where our line was. Dan told him that he would get the plans and show him. The pipeline had been flagged previous to this date. Doug replied that he didn't need to see the plans because he knew where our pipeline was and pointed to the east side of the road to the area that had been previously flagged.

Weber stated that there should be a law against utilities. He told Buseth, "I hate utilities. Some day I am going to hit your main at 5:00 p.m. on Friday after you have gone home." Weber was in a fit of rage, screaming and swearing at Dan.

The next day, Dan stopped to talk to Doug. Buseth informed Weber that MCWC would clean up the mess in the area where we had relocated the pipe. Dan was standing on the tracks of R & G's dozer. Doug got in Dan's face and cupped his hands, extending them. Weber told Dan that he was so mad that he could choke someone. Doug was nose to nose with Dan and swore at him repeatedly. Weber was in such a fit of rage that Dan was concerned for his own well being.

On July 28th at 11:30 a.m., we received a call that the contractor has hit our line and caused a leak. The leak was fixed and dirt was mounded on the pipe to hold it in place since it was only 2-3 feet deep after the dirt had been removed. We had probed our pipe and let them cut to within 2 feet. R & G agreed that they would not cut any more dirt off of the pipeline before we left the job site that day.

On July 29th at 7:21 a.m., we received a call from a customer that they were without water service. When MCWC crew's arrived, they found that R & G had graded out the pipeline again just 50 feet from where they had hit it on the 28th. Again MCWC crews piled dirt on top of the pipe to keep it from rising out of the ground.

Doug Weber then told Dan about possibly having another problem, as there was pipe sticking out of the ground. When they went to the site, they did not see pipe sticking out of the ground, but instead saw scraps of pipe spread out in the fill on the road. Machinery was working in the area at that time and 20 feet of pipe was missing.

On August 2nd, R & G hit the pipeline again and we fixed two more leaks. MCWC crew dug test holes and located pipe horizontally and vertically. Flags were set showing the depth of the pipe. MCWC probed the pipe as scrapers cut. R & G informed MCWC that they were done in that area and it was now at the plan grade.

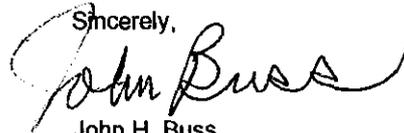
At 1:30 p.m., we were again notified that R & G had hit our pipeline in the same place. Following the repair, dirt was again piled on the pipe and flags were used to mark the location. We were notified at 4:30 p.m. that R & G had hit our pipe once again in the same place as the 1:30 p.m. leak.

We had a total of seven hits in this one segment between Stations 262 and 277, which is approximately 1500 feet. Two more hits were between Stations 290 and 295. MCWC had a crew on the job site during the duration of the project. They were at the contractor's disposal at all times.

On August 3rd, MCWC's manager, John Buss, confronted Doug Weber and told him that it was unacceptable to continue to intentionally hit our pipelines, and if it continued MCWC would be contacting the States Attorney and MCWC's corporate attorney. MCWC did not experience any hits on the pipeline by R & G after that.

The contractor was asked if they wanted the pipe marked and they told us no. They knew where it was. Evidence is very clear that they did not care where our pipeline was.

I do have more detailed information on these events and would be happy to meet with the One Call Board at your convenience.

Sincerely,

John H. Buss
General Manager

South Dakota One Call

SEQUENCE NUMBER 0031

CDC = MCW

Transmit: 07/07/99 At: 1623

Prepared: 07-JUL-99 Time: 1452 By: ABG

Ticket No.: 991880333

u 10 ft up

Type: *** R O U T I N E *** Class: TRANSMIT

Operators Notified:

M09=/MEC-SIOUX FALLS/ MCW=/MINNEHAHA WTR / SFC=/S FALLS CABLE /
SVE=/SIOUX VLY SWELE/ UWS=/US WEST - SIOUX/ NSP=/NSP /

Location Information:

County: MINNEHAHA City/Village: BRANDON City Limits?: N

Platted Lot Number:

Legal Given: Y

Twp: 101N Rng: 48W Sec/Qtr: 17-NW-SW

Twp: 101N Rng: 48W Sec/Qtr: 18-NE-SE

Street: 0 CO RD 119

Nearest Intersection: HWY 38

Type of Work : GRATING AND CULVERT INSTALL

Extent of Work: R/W

Location of Work

R.O.W.: Y Depth: 10FT Explosives: N Tunnel/Bore: N

Start Date: 07/12/99 Time: 1000 Duration: 90 DAYS

Remarks:

CALLER REQUEST A MEET WITH UTILITIES AT ABOVE INTER ON JULY 12 AT
10:00PM FOR WORK TO TAKE PLACE FROM THIS POINT 5 MILES N AND
1 1/2 MILES SOUTH

Meeting Required: Y Best Time to Contact: 0700 - 0600

Work Being Done For: MINNEHAHA COUNTY

Excavator Information:

Caller: RICK SCHAEFFER Phone: 507-537-1473

Address:

City:

Excavator: R & G CONSTRUCTION

Address: RT 1 BOX 37A

City: MARSHALL, MN 56258

Phone: 507-537-1473 Fax: 507-537-0513

Contact: RICK SCHAEFFER Phone: 507-537-1473

Alt. Contact: JASON PETERSON Phone: 507-537-1473

End Ticket



South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

December 13, 1999

Capitol Office
Telephone (605)773-3201
FAX (605)773-3809

Transportation/
Warehouse Division
Telephone (605)773-5280
FAX (605)773-3225

Consumer Hotline
1-800-332-1782

TTY Through
Relay South Dakota
1-800-877-1113

Internet Website
www.puc.state.sd.us/puc/

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Jim Burg
Chairman
Pam Nelson
Vice-Chairman
Laska Schoenfelder
Commissioner

William Bullard Jr.
Executive Director

Harlan Best
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Katie Johnson
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Delaine Kolbo
Charlene Lund
Terry Norum
Gregory A. Rislov
Keith Senger
Rolayne Ailts Wiest
♦

Hughes County Sheriff's Office
3200 East Highway 34, Suite 10
Pierre, SD 57501

Re: In the Matter of the Complaint filed by Minnehaha
Community Water Corporation, Dell Rapids, South
Dakota, against R & G Construction, Marshall Minnesota

Dear Sirs:

Enclosed you will find a copy of an Order for and Notice of Hearing with reference to the above captioned matter. Would you please serve the Order upon the CT Corporation System, Riter, Mayer, Hofer, Wattier & Brown, 319 South Coteau Street, Pierre, South Dakota. Please send us your return of service once the Order has been served, together with your statement and we will promptly remit.

Thank you.

Very truly yours,

Camron Hoseck
Staff Attorney

CH:dk
Enc.



South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

December 14, 1999

Mr. Jerry May
AAA Reporting - May Company
738 South 1st Avenue
Sioux Falls, SD 57104

Dear Jerry:

This will confirm our mutual telephone messages of today. We will need a reporter to cover a hearing to be conducted by the One-Call Notification Board on January 21, 2000, in Sioux Falls. As I mentioned, this could be short or it could go until perhaps noon. It is scheduled to begin at 8:00 o'clock in the morning at the Ramkota Inn, Jefferson Room. I am enclosing an Order for and Notice of Hearing for your information. If in the meantime you have any questions, please feel free to give me a call.

Very truly yours,

Camron Hoseck
Staff Attorney

CH:dk
Enc.

cc: Mr Larry Englerth

Capitol Office
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FAX (605)773-3809

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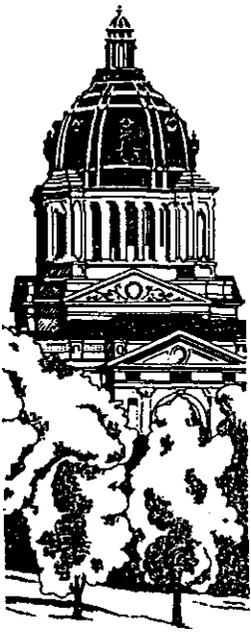
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Keith Senger
Rolayne Ailts Wiest
♦



South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

December 22, 1999

VIA FAX and MAIL

Rick Schaeffer
R & G Construction
Route 1, Box 37A
Marshall, MN 56258

Dear Mr. Schaeffer:

Per your request to One-Call Notification Board Chairman Todd Chambers, enclosed please find a copy of the letter of complaint filed by Minnehaha Community Water, Corp. with regard to R & G Construction. It is dated November 8, 1999 and consists of two pages plus an attachment, ticket number 991880333.

Very truly yours,

Camron Hoseck
Staff Attorney

cc: Larry Englerth

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MINNEHAHA COMMUNITY WATER, CORP.

47381 248TH STREET
DELL RAPIDS, SD 57022-5305
TELEPHONE (605) 428-3374 or (605) 529-5799
FAX (605) 428-3395

RECEIVED

NOV 15 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

November 8, 1999

South Dakota One Call
% Larry Englerth, Executive Director
1012 No. Sycamore Ave.
Sioux Falls, SD 57103

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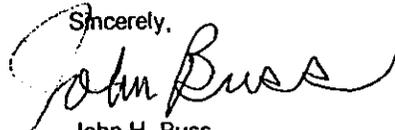
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I do have more detailed information on these events and would be happy to meet with the One Call Board at your convenience.

Sincerely,



John H. Buss
General Manager

South Dakota One Call

SEQUENCE NUMBER 0031

CDC = MCW

Transmit: 07/07/99 At: 1623

Prepared: 07-JUL-99 Time: 1452 By: ABG

Ticket No.: 991880333

Type: *** R O U T I N E *** Class: TRANSMIT

*u 10 ft
up*

Operators Notified:

M09=/MEC-SIOUX FALLS/ MCW=/MINNEHAHA WTR / SFC=/S FALLS CABLE /
SVE=/SIOUX VLY SWELE/ UWS=/US WEST - SIOUX/ NSP=/NSP /

Location Information:

County: MINNEHAHA City/Village: BRANDON City Limits?: N

Platted Lot Number:

Legal Given: Y

Twp: 101N Rng: 48W Sec/Qtr: 17-NW-SW

Twp: 101N Rng: 48W Sec/Qtr: 18-NE-SE

Street: 0 CO RD 119

Nearest Intersection: HWY 38

Type of Work : GRATING AND CULVERT INSTALL

Extent of Work: R/W

Location of Work

R.O.W.: Y Depth: 10FT Explosives: N Tunnel/Bore: N

Start Date: 07/12/99 Time: 1000 Duration: 90 DAYS

Remarks:

CALLER REQUEST A MEET WITH UTILITIES AT ABOVE INTER ON JULY 12 AT
10:00PM FOR WORK TO TAKE PLACE FROM THIS POINT 5 MILES N AND
1 1/2 MILES SOUTH

Meeting Required: Y Best Time to Contact: 0700 - 0600

Work Being Done For: MINNEHAHA COUNTY

Excavator Information:

Caller: RICK SCHAEFFER Phone: 507-537-1473

Address:

City:

Excavator: R & G CONSTRUCTION

Address: RT 1 BOX 37A

City: MARSHALL, MN 56258

Phone: 507-537-1473 Fax: 507-537-0513

Contact: RICK SCHAEFFER Phone: 507-537-1473

Alt. Contact: JASON PETERSON Phone: 507-537-1473

End Ticket

R and G Construction Co.

Telephone 507-537-1473



Highway 59 South
2694 Co. Rd. 74
Marshall, MN 56258

FAX 507-537-0513

EQUAL OPPORTUNITY EMPLOYER

December 29, 1999

The One-Call Notification Board
of the State of South Dakota

Re: January 21, 2000 Hearing on Minnehaha Community Water Corporation's
Claims Against R and G Construction Co. Pursuant to SDCL §49-7A-12

Dear One-Call Notification Board:

Pursuant to SDCL §1-26-17(4), R and G Construction Company hereby demands that, prior to the above-referenced hearing, it be provided with a more detailed and definite statement of the claims asserted against it by Minnehaha Community Water Corporation. Specifically, such statement should include, at a minimum: 1) the specific dates and locations for each alleged damage incident forming the alleged basis of the Water Corporation's complaint; 2) the total dollar amount claimed as a result of these proceedings; and 3) the names and addresses of all persons who have knowledge of relevant facts.

Pursuant to SDCL §1-26-22, R and G Construction Company further requests that the Board provide a court reporter to record verbatim testimony taken at the hearing on January 21, 2000.

Thank you for your assistance. If you have any questions about these requests, please call Greg Mathiowetz at (507) 537-1473.

STP:72466.1



South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

January 3, 2000

John H. Buss
General Manage
Minnehaha Community Water, Corp.
47381 248th Street
Dell Rapids, SD 57022-5305

Capitol Office
Telephone (605)773-3201
FAX (605)773-3809

Transportation/
Warehouse Division
Telephone (605)773-5280
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Gregory A. Rislov
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Rolayne Ailts Wiest
◆

Re: In the Matter of the Complaint filed by Minnehaha Community Water Corporation, Dell Rapids, South Dakota, against R & G Construction, Marshall, Minnesota

Dear Mr. Buss:

Transmitted herewith is an Order For and Notice of Hearing in the above referenced matter.

Very truly yours,

Camron Hoseck
Staff Attorney

cc: Larry Englerth

South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

January 3, 2000

Greg Mathiowetz
R and G Construction Co.
Highway 59 South
2694 Co. Rd. 74
Marshall, MN 56258

Re: In the Matter of the Complaint filed by Minnehaha Community Water Corporation, Dell Rapids, South Dakota, against R&G Construction, Marshall, Minnesota

Dear Mr. Mathiowetz:

This is in reply to your letter of December 29, 1999 to the One-Call Notification Board. An Order For and Notice of Hearing was served upon R and G Construction's resident agent in South Dakota. That Order for and Notice of Hearing complies with the requirements of SDCL 1-26-17. On December 22, 1999, at the request of Rick Schaeffer, a copy of the letter of complaint was provided to R and G Construction. In case these documents have not reached you for some reason, I am enclosing copies of them.

In response to your request for particulars, please refer to the above-mentioned letter of complaint. The Order for and Notice of Hearing does specify that the issues will be "whether the Excavator violated the provisions of SDCL 49-7A-12 and whether the Excavator shall be ordered to pay a civil penalty of up to one thousand dollars for each violation pursuant to this provision of law." As to persons who have knowledge of the relevant facts, please refer to the letter of complaint. Your company is free to engage in discovery to obtain such other necessary detail.

The Board has already contracted with a court reporter and one will be present for the hearing scheduled on January 21, 2000.

Very truly yours,

Camron Hoseck
Staff Attorney

cc: Larry Englerth, Executive Director, SD One-Call Notification Board
Minnehaha Community Water Corporation



Capitol Office
Telephone (605)773-3201
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Gregory A. Rislov
Keith Senger
Rolayne Ailts Wiest
♦

HUGHES COUNTY SHERIFF'S OFFICE

Michael H. Leidholt - Sheriff

Phone 773-7470
Fax 773-7474

3200 E. Hwy 34 - Suite 9
Pierre, South Dakota 57501

RECEIVED

TO:

JAN 04 2000

CAMRON HOSECK
SD PUBLIC UTILITIES COMMISSION
500 E CAPITOL AVE
PIERRE SD 57501-5070

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION



REFERENCE:

Return No
992329

Date
12/14/1999

Amount Due
\$19.50

IN THE MATTER OF THE COMPLAINT FILED
BY MINNEHAHA COMMUNITY WATER CORP

VS.

AGAINST R & G CONSTRUCTION,
MARSHALL, MINNESOTA

ORDER FOR AND NOTICE OF HEARING,

SHERIFF'S FEES

EXECUTION
RECOVERY FEE
RECOVERY FEE 2
RECOVERY FEE 3

Service of Process	<u>\$16.50</u>
Penalty Costs	<u> </u>
Same time Service	<u> </u>
Sheriff's Fees 2	<u> </u>
Levy Fees	<u> </u>
Mileage <u>10</u> @ <u>.3</u>	<u>\$3.00</u>
	<u>0</u>
Total	<u>\$19.50</u>
Less Payment of	<u> </u>
Balance Due	<u>\$19.50</u>

COMMENTS:

Please return this form with Payment.
Thank You.

CASE NO: _____

I
N
V
O
I
C
E

STATE OF _____ }
COUNTY OF _____ } SS

RETURN NO 992329

CPLIMS:

IN _____

IN THE MATTER OF THE COMPLAINT FILED
BY MINNEHAHA COMMUNITY WATER

AGAINST R & G CONSTRUCTION,
MARSHALL, MINNESOTA

SHERIFF'S RETURN

PERSONAL SERVICE

STATE OF SOUTH DAKOTA }
COUNTY OF HUGHES } SS



I hereby certify that the ORDER FOR AND NOTICE OF HEARING,

in the above entitled action, hereto attached, came into my hand for service on the 14 day of DECEMBER
19 99 and that on 14 day of DECEMBER, 19 99, at 1038 HRS in said county

I did serve the within

ORDER FOR AND NOTICE OF HEARING,

on CT CORPORATION AS REGISTERED AGENT FOR R & G CONSTRUCTION, MARSHALL, MN
by then and there delivering to and leaving with CT CORPORATION AS REGISTERED AGENT FOR
R & G CONSTRUCTION

SHERIFF'S FEES

SERVICE OF PROCESS	\$16.5
PENALTY COSTS	_____
N/C SERVICE OF PROCESS	_____
SAME TIME SERVICE	_____
SHERIFF'S FEES	_____
LEVY FEES	_____
MILEAGE <u>10</u> @ <u>.30</u>	\$3.00
N/C MILEAGE _____ @ <u>.30</u>	_____
TOTAL	\$19.50

1

ATTORNEY REC'D FROM

CAMRON HOSECK

SD PUBLIC UTILITIES COMMISSION

500 E CAPITOL AVE

PIERRE SD 57501-5070

Michael H. Leidholt

SHERIFF OF HUGHES COUNTY

DATE 12/14/1999

BY Joe Harmon Jr.

DEPUTY

R and G Construction Co.

Telephone 507-537-1473



Highway 59 South
2694 Co. Rd. 74
Marshall, MN 56258

FAX 507-537-0513

EQUAL OPPORTUNITY EMPLOYER

January 10, 2000

South Dakota One-Call
C/O Larry Englerth
1012 North Sycamore Ave
Sioux Falls, SD 57103

Camron Hoseck
South Dakota Public Utilities Commission
State Capital Building
500 East Capital Avenue
Pierre, SD 57501-5070

RECEIVED

JAN 14 2000

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

Re: Complaint by Minnehaha Community Water Corporation
Project: Six Mile Road
Respondent: R and G Construction Co.

FAX Received JAN 13 2000

Gentlemen:

This letter is written in response to your request for a written statement from R and G Construction Co. Concerning our response to the allegations made in the Water Corporations letter of November 8, 1999.

1. The County notified Water Corporation in Feb. 1999 that they would need to move any water lines impeding the work on the above project within 90 days. This notice was given before bidding.
2. The Water Corporation was notified again that they needed to move lines when they attended the July 7, 1999 pre-construction meeting. At that meeting we learned that the Water Corporation had not moved any lines and needed to install a new line before we did work in a residential area. This interference was not identified in the project plans and specifications. At the meeting the Water Corporation was also expressly told that the contractor would be starting 48 hours after the One-Call notice on the south end of the project.
3. The Water Corporation was notified again concerning the interference by R and G's One-Call notice. Pursuant to the information provided at the pre-construction meeting, they should have, and could have, started their work on the first 3 miles plus of the south end of the project at that time. No work was started.
4. The project needed to be completed by October 1, 1999. Because Water Corporation was not starting their work, R and G changed its planned schedule completely to help them to get their line moved. We cut through hills that needed to be cut 25-30 feet, out of sequence, and contrary to our original plan. We also placed all that dirt out of sequence, leaving the most time consuming residential work until last. The residential work included curb and gutter, storm sewer work and multiple subs which required multiple mobilizations after the rest of the job was done because Water Corporation made no attempt to start relocating their line before this project was started.
5. At no time did R and G intentionally damage a water line or intentionally fail to promptly report a known damage incident to Water Corporation.

6. On August 3rd or August 4, 1999, I went on site to investigate Water Corporation's allegations about R and G intentionally hitting Water Corporation's water lines. I was told that Water Corporation's foreman "Dan" had been told by one of our employees that our foreman, Doug Weber had told him to strike the line. When I questioned "Dan" about this conversation in John Buss' presence, "Dan" expressly denied that he had ever heard such a statement from our employee! This incident causes me to doubt the accuracy of this and other statements attributed to Water Corporation field personnel concerning alleged statements and actions by R and G employees.

7. Water Corporation's management never notified myself or other R and G management concerning their allegations of intentional damage to their lines until on or about August 3, 1999. In the meantime, we were continuing to do their cut back work for them and attempting to deal with the other problems caused by their failure to timely perform their relocation work. If there was any substance to Water Corporation's allegations, common sense would indicate that they would have been investigated promptly and, if verified, remedied forthwith.

8. Water Corporation's November 8, 1999 complaint fails to indicate the date and location of all of the alleged hits, so R and G is unable to provide specific information in response to each of the alleged incidents. Until the Commission sent us a copy of Water Corporation's complaint, R and G had no idea even of the specific number of intentional hits that were being alleged. This lack of communication by Water Corporation is indicative of how they handled this project.

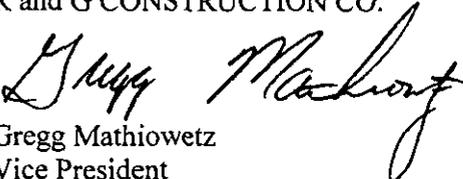
9. I believe that Minnehaha County will fully support R and G's above described statements concerning the problems caused by Water Corporation's repeated failure to take any action in regard to utility relocation notices and R and G's One-Call notice.

10. R and G has served Water Corporation with a Notice of Claim advising it of R and G's intention to pursue a claim against Water Corporation for delays, interferences and obstructions to R and G's work which was caused in whole or in part by the acts or omissions of Water Corporation.

Based on the above information, I do not understand how these issues come under the South Dakota One-Call Boards jurisdiction because we did have a One-Call for this project and the utilities were also informed of what was going on at the Pre-construction meeting and were notified by the Minnehaha County of what was going to happen. With this information, I am asking that you reconsider this meeting, dismiss the complaint, and cancel the meeting since the utilities were duly served and informed.

Sincerely,

R and G CONSTRUCTION CO.



Gregg Mathiowetz
Vice President

cc: Ron Schmidt
Schmidt, Schroyer & Morena



ONE CALL NOTIFICATION BOARD

c/o Public Utilities Commission
State Capitol • 500 East Capitol Avenue • Pierre, South Dakota 57501-5070

January 13, 2000

Gregg Mathiowetz, Vice President
R and G Construction Company
Highway 59 South
2694 Co. Rd. 74
Marshall, MN 56258

VIA FACSIMILE

Dear Mr. Mathiowetz,

I received your correspondence yesterday and have will facsimile the document to the chairman of the South Dakota One Call Notification Board, Mr. Todd Chambers, for any action desired by the Board. Neither Mr. Hoseck nor myself have the authority to take any action on your request to dismiss the complaint or delay/cancel the hearing scheduled for January 21st.

If the Board initiates any action, Mr. Chambers or myself will contact you immediately. Pending further correspondence, the hearing will continue as scheduled.

Sincerely,


Larry L. Englerth
Executive Director

Cc: Todd Chambers
Camron Hoseck

R and G Construction Co.

Telephone 507-537-1473

Highway 59 South
2694 Co. Rd. 74
Marshall, MN 56258

FAX 507-537-0513

EQUAL OPPORTUNITY EMPLOYER

January 10, 2000

South Dakota One-Call
C/O Larry Englerth
1012 North Sycamore Ave
Sioux Falls, SD 57103Camron Hoseck
South Dakota Public Utilities Commission
State Capital Building
500 East Capital Avenue
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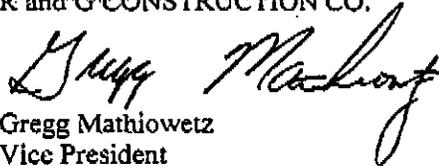
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Sincerely,

R and G CONSTRUCTION CO.


Gregg Mathiowetz
Vice President

cc: Ron Schmidt
Schmidt, Schroyer & Morena

RECEIVED

JAN 25 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE ONE-CALL NOTIFICATION BOARD

OF THE STATE OF SOUTH DAKOTA

* * * * *

IN THE MATTER OF THE COMPLAINT FILED
BY MINNEHAHA COMMUNITY WATER
CORPORATION, DELL RAPIDS, SOUTH
DAKOTA, AGAINST R & G CONSTRUCTION,
MARSHALL, MINNESOTA,

* * * * *

BOARD MEMBERS:

Mr. Todd Chambers, Chairman
Mr. Jim Lewis
Mr. Pat Gilligan
Mr. Curt Pohl
Mr. Harold Anderson
Mr. Tom Krueger
Mr. Doug Bierschbach
Mr. Eugene Solseth
Mr. Camron Hoseck, Attorney

APPEARANCES:

Mr. Jerome Lammers
Attorney at Law
Madison, South Dakota

for the Minnehaha Community Water Corporation;

Mr. Ronald Schmidt
Attorney at Law
Pierre, South Dakota

for the R & G Construction;

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1 MR. CHAMBERS: Ready to begin, I will
2 begin the hearing in this administrative case which is
3 entitled: In the matter of the complaint filed by
4 Minnehaha Community Water Corporation, Dell Rapids,
5 South Dakota against R & G Construction, Marshall,
6 Minnesota. The time is 8:05 A.M., the date is January
7 21, 2000, and the location of the hearing is the
8 Jefferson Room, Ramkota Inn, 2400 North Louise Avenue,
9 Sioux Falls, South Dakota.

10 I am Todd Chambers, Board Chairman. Also
11 present are Board Members Doug Bierschbach, Harold
12 Anderson, Curt Pohl, Pat Gilligan, Eugene Solseth, Tom
13 Krueger, Jim Lewis.

14 The hearing was noticed pursuant to the
15 Board's Order for and Notice of Hearing issued September
16 13, 1999.

17 The issue at this hearing is whether the
18 excavator R & G Construction has knowingly violated the
19 provisions of SDCL 49-7A-12 and whether the excavator
20 shall be ordered to pay a civil penalty for up to \$1,000
21 for each violation pursuant to this provision of law.

22 All parties have the right to be present
23 and to be represented by an attorney. All persons so
24 testifying will be sworn in and subject to
25 cross-examination by the parties. The Board's final

1 decision may be appealed by the parties to the State
2 Circuit Court and State Supreme Court.

3 Camron Hoseck will act as the Board's
4 Counsel. He may provide recommended rulings on
5 procedural and evidentiary matters. The Board may
6 overrule counsel's preliminary rulings throughout the
7 hearing. If not overruled, the preliminary rulings will
8 become final rulings.

9 MR. HOSECK: At this time I will take the
10 appearances of the parties.

11 MR. LAMMERS: I am Jerry Lammers from
12 Madison representing Minnehaha Community Water
13 Corporation.

14 MR. SCHMIDT: Ron Schmidt from Pierre,
15 South Dakota representing R & G Construction.

16 MR. HOSECK: Are there any preliminary
17 motions we need to address at this point in time?

18 MR. LAMMERS: I have none.

19 MR. SCHMIDT: We had filed a motion to
20 dismiss the complaint as being without merit, and I
21 guess under the circumstances we will defer until after
22 the evidence for a ruling.

23 MR. HOSECK: Does either of the parties
24 wish to make an opening statement at all?

25 MR. LAMMERS: No, I don't think any is

1 necessary as far as we are concerned.

2 MR. SCHMIDT: No.

3 MR. HOSECK: At this time we will start
4 with the testimony, and the Minnehaha Community Water
5 Corporation will proceed first. So, Mr. Lammers, you
6 may call your first witness.

7 MR. LAMMERS: Call John Buss. John, if
8 you stand and take the chair over there.

9

10 JOHN BUSS,
11 called as a witness, being first duly sworn, testified
12 and said as follows:

13

14 DIRECT EXAMINATION BY MR. LAMMERS:

15 Q. You may state your name for the record,
16 please?

17 A. My name is John Buss.

18 Q. What is your residence address?

19 A. 46434 Colton, South Dakota.

20 Q. What is your occupation?

21 A. I am the general manager of Minnehaha
22 Community Water Corporation.

23 Q. How long have you been so engaged?

24 A. Twenty-three years.

25 Q. We are here today to discuss an alleged

1 incident which took place in July of 1999, and that
2 involves the R & G Construction company of Marshall,
3 Minnesota, on a project known as the six mile road, is
4 that correct?

5 A. That's correct.

6 Q. Before I get to that, though, let me ask you
7 just as a matter of background approximately how many
8 customers do you have in your water corporation?

9 A. Right close to 4,000, 3,800 to 4,000.

10 Q. What is your service territory?

11 A. Pretty much all of Minnehaha County, parts of
12 Lincoln County, parts of McCook County, Moody County.

13 Q. Those are basically rural areas, and some of
14 the smaller towns?

15 A. Pretty much urban and rural, we serve eight
16 or nine small towns in the counties.

17 Q. Could you tell the Board where, they don't
18 know, and I am not sure I know exactly where the six
19 mile road is located?

20 A. That is obviously a six mile stretch of road
21 that runs just west of Arndt's Salvage, it runs across
22 east of Arndt's Salvage, runs north and south, comes out
23 on Rice Street and terminates down I believe it is on
24 41st Street.

25 Q. Located which direction from Sioux Falls?

1 A. East of Sioux Falls.

2 Q. About how far?

3 A. Oh, probably a mile, mile and a half out of
4 the city limits.

5 Q. What was the nature of the project?

6 A. That was, on our part it was relocating lines
7 for a grading project. It was a road grading project,
8 six miles of re-grading township road.

9 Q. Did you have a water line located in that
10 vicinity?

11 A. Yes, we had line in most of that six miles.
12 I think all of it probably.

13 Q. Can you tell the Board approximately where
14 your line was located?

15 A. Some of it was in private right-of-way, some
16 was in the road side ditch.

17 Q. None of it was directly under the road?

18 A. We had one portion that was on the shoulder
19 of the road.

20 Q. When were you first officially notified that
21 this project was a go?

22 A. I think our first notification, first that we
23 heard that it had been let is when we got a call that
24 there was going to be a preconstruction meeting. We did
25 not have any official notification that the project had

1 been let.

2 Q. When was that preconstruction meeting to be
3 located, or be held I mean?

4 A. I believe it was July 7th, I didn't go to it
5 personally, my operations superintendent went, but it
6 was July 7th I believe.

7 Q. Then it was after that time when this
8 incident occurred that we are here talking about today?

9 A. That's correct.

10 Q. Had you begun relocating your line?

11 A. We had started relocating, we had the first
12 mile and a half on the north end of the project located.
13 That's, according to our plans that looked like that was
14 the start of the project, it was station 0 on the
15 project. And in several conversations we had with the
16 county there was funding problems, and as recently as
17 this spring we had a conversation with my project, or my
18 operations superintendent and I had a conversation with
19 Bob Meister in his office, and he made the statement
20 that he didn't know if the project was going to go
21 because they were having right-of-way problems. And he
22 was going to have a come to Jesus meeting with the
23 people and if they didn't start cooperating on the
24 right-of-way and easements the project probably wasn't
25 going to go.

1 Q. Again you were notified that officially of
2 this preconstruction meeting which was to be held July
3 7th?

4 A. Yes, I think Jim said he had a phone call on
5 that.

6 Q. When did this incident which you are talking
7 about today occur, what was the date of that?

8 A. That was the 29th of July.

9 Q. I think that's all the questions I have at
10 this time of this witness?

11 MR. HOSECK: Cross examination
12 Mr. Schmidt.

13 MR. SCHMIDT: None.

14 MR. HOSECK: Any questions by the Board
15 members? There being none, this witness is excused and
16 you may call your next witness.

17 MR. LAMMERS: Thank you, call Dan Buseth.

18
19 DAN BUSETH,
20 called as a witness, being first duly sworn, testified
21 and said as follows:

22
23 DIRECT EXAMINATION BY MR. LAMMERS:

24 Q. You may state your name, please?

25 A. Daniel Buseth.

- 1 Q. Spell your last name?
- 2 A. B-U-S-E-T-H.
- 3 Q. What is your residence address?
- 4 A. 308 South Lake, Hendricks, Minnesota.
- 5 Q. What is your occupation?
- 6 A. Construction foreman.
- 7 Q. For whom do you work?
- 8 A. Minnehaha Community Water.
- 9 Q. How long have you been engaged in that job?
- 10 A. Five years.
- 11 Q. What is your job title?
- 12 A. Construction foreman.
- 13 Q. You are familiar with the so called six mile
- 14 road project that we are talking about today?
- 15 A. Yes, sir.
- 16 Q. That is located just east of Sioux Falls?
- 17 A. Yes.
- 18 Q. Did you have a crew on that site in July of
- 19 1999?
- 20 A. There was three of us there.
- 21 Q. For what purpose were you there?
- 22 A. Relocating our water main.
- 23 Q. Where had you started with reference to that
- 24 project to relocate?
- 25 A. We had a private contractor come in and we

1 had two areas we were working on. One was starting at
2 26th Street running to 41st, and the second project
3 going at the same time was from Madison Street to
4 Highway 38.

5 Q. This road runs north and south?

6 A. Yes, sir.

7 Q. You started on what end of the project?

8 A. The first crew started on the south end of
9 the project.

10 Q. From the plans that you had, was that where
11 the project was indicated as beginning?

12 A. I guess I didn't know where the road
13 contractor was going to start.

14 Q. They were in the process of relocating some
15 of the line at that time?

16 A. Yes, and they were working on from 26th
17 Street to 41st Street, the same area where we were
18 relocating.

19 Q. Can you tell me approximately what date that
20 would have commenced?

21 A. I believe it was July 12 or 13th when our
22 crews -- yeah, when our crew started there.

23 Q. And the incident we are talking about here
24 today was on the 27th of July of 1999?

25 A. 29th of July.

1 Q. 29th of July. Had you been on the site
2 previous to that date?

3 A. Yes, sir, for approximately five to six days
4 a week.

5 Q. When were you first notified that there was a
6 hit on your line on the 29th of July?

7 A. The morning on our enroute to work on the six
8 mile road we were notified by our plant operator.

9 Q. His name is?

10 A. Jim Auen, A-U-E-N.

11 Q. Is he stationed, or his work, is that at the
12 main plant?

13 A. He is our plant operator at the plant, and he
14 was on call that week so he received all incoming calls
15 from our answering service.

16 Q. And did he notify you that there had been a
17 hit on your line that morning?

18 A. Yes, sir.

19 MR. SCHMIDT: Excuse me, counsel, of what
20 day?

21 A. July 29th, the morning of July 29th.

22 Q. What time in the morning was that, do you
23 have a record of that?

24 A. I believe it was right around 7:20, 7:22.

25 Q. In response to that call then you arrived at

1 the site?

2 A. We were enroute, received a call that there
3 was no water on the south end of our project, so we
4 proceeded and started shutting water valves off.

5 Q. What did you find when you first got there?

6 A. Our line had been hit close to 26th Street.

7

8 (Exhibit 1 marked For identification.)

9

10 Q. I show you what has been marked as Exhibit 1,
11 and ask if that is a schematic of the six mile road
12 project?

13 A. Yes, sir.

14 Q. The first leak is identified with a blue
15 marker?

16 A. Yes, at station 265+00.

17 Q. Is that on the north end of the project?

18 A. It's on the south end.

19 Q. I am sorry, the south end.

20 A. Yes.

21 Q. After you had arrived then and found that
22 leak, can you tell the Board what happened at that
23 point?

24 A. We shut the water off immediately, proceeded
25 to fix the leak at that station, and was notified by R &

1 G that there was probably a problem farther south of us
2 also.

3 Q. Was it an employee of R & G that came up when
4 you were working on the first leak?

5 A. Yes, sir.

6 Q. What did he tell you?

7 A. That there may be a problem approximately a
8 quarter mile to the south, at least a quarter mile south
9 of us.

10 Q. Did you then go up and take a look and see
11 what that situation was?

12 A. After fixing the first leak we proceeded to
13 go up to the area up in that area, and we didn't see any
14 leak in water, we saw pieces of pipe laying on top of
15 the ground, and we started to dig to see if there was a
16 problem, and then we ended up finding another leak
17 there.

18 Q. That was the second leak?

19 A. Second leak, yes, a busted pipe.

20 Q. What was the nature of that leak, had that
21 been, how was it caused, if you could tell?

22 A. Heavy equipment pushing the pipe up. The
23 pipe had become exposed, the pipe becomes exposed, heavy
24 machinery had crossed it breaking the ends off causing
25 the shattered pipe, of course, and then it was as the

1 soil was being worked it was covered up or was below
2 grade so we didn't see it, that's why we couldn't find
3 it right away when we got up there. It was below the
4 grade.

5 Q. Had it been graded over?

6 A. There was, when we came there was a bulldozer
7 working the area and a maintainer, it was all covered
8 up.

9 Q. What was the nature of the first strike, I
10 don't think I asked you that?

11 A. That was a four-wheel drive tractor pulling a
12 disc and the disc drove over the top of our pipe
13 splitting it.

14 Q. Then did you proceed after you found the
15 second leak to investigate if there were any more leaks?

16 A. After the second leak we turned the water
17 back on, there was even no water further south. We
18 examined the area and water started seeping up through
19 the soil 75 to 100 feet farther south of the second
20 leak.

21 Q. What was the nature of that strike?

22 A. The heavy equipment on the soil pushing the
23 gasketed pipe apart.

24 Q. Was that covered up also?

25 A. That probably was never exposed. That had a

1 couple feet of cover on it, just the movement of the
2 soil causing that pipe to pull apart.

3 Q. What caused the movement of the soil?

4 A. It was I assume heavy equipment.

5 Q. Is the second leak identified on Exhibit 2 as
6 orange?

7 A. Yes, sir.

8 Q. And the third is yellow?

9 A. Yes.

10 MR. LAMMERS: We will offer Exhibit 1.

11 MR. SCHMIDT: No objection.

12 MR. HOSECK: It will be admitted.

13 Q. Did you then, you and your crew proceed to
14 fix all three of those leaks that day?

15 A. All three of the leaks were fixed and water
16 was turned on at 12:15, at noon.

17 Q. The first time when you saw or heard anyone
18 with R & G was when you arrived at the site after you
19 received notice from your operator at the plant?

20 A. We were enroute, shut the water off knowing
21 the area that he described, shutting the water off, the
22 valve was before we got to where the leak was, the water
23 was shut off first, we started working on the first
24 leak, and then R & G employees notified us there
25 probably could be a problem farther south.

1 Q. That's all the questions I have.

2 MR. HOSECK: Cross examination.

3 CROSS EXAMINATION BY MR. SCHMIDT:

4 Q. As I understand it, you are only talking
5 about three specific leaks?

6 A. Yes, sir.

7 Q. And in the area, if you would, tell the Board
8 what the condition of the ground was in this area, was
9 it soft?

10 A. The soil was very soft.

11 Q. And it was very wet, is that correct?

12 A. The ground water.

13 Q. What work activities were going on in that
14 specific area?

15 A. Heavy equipment, scrapers, dozers.

16 Q. Discs?

17 A. Discs.

18 Q. As I understand you, two of these three leaks
19 were down under the ground, you had to actually dig down
20 to find them?

21 A. One. The first one was, we had a problem
22 with that the day before that we fixed.

23 Q. So you had a previous problem with the first
24 leak?

25 A. It was hit the day before, and we fixed it,

1 and we covered it with soil to protect it, keep it out
2 of the way, and that was hit with the disc. That was
3 covered up through maintaining the pipes so it didn't
4 pull apart, that was the first one that morning. Then
5 the second one that morning, the pipe, the heavy
6 equipment, like I say the soil was off, the heavy
7 equipment had pumped the pipe up and that had pushed it
8 out of the ground, that two feet of cover on, whatever,
9 it had pumped it above the ground, the two ends were
10 showing. When we found the leak finally there was
11 probably six to eight feet of pipe missing, so the pipe
12 was sticking out of the ground so heavy equipment would
13 come by breaking the ends off or shattering the ends,
14 and when we found the pipe it was probably under the
15 grade six inches, and the pipe was up probably at a 45
16 degree angle.

17 Q. Six inches under the surface?

18 A. After it was pumped up. As we dug the pipe
19 back down to lower it to fix it, it probably went to the
20 two foot depth again, it was probably two feet deep. It
21 had been pumped up like this, the equipment had broke it
22 off, the pipe was angled up and then covered.

23 Q. Explain what you mean by pumping, how deep
24 was the pipe before the pumping action started below the
25 surface of the ground?

1 A. At that particular leak?

2 Q. At that particular spot?

3 A. I would say two to two and a half feet, two
4 feet.

5 Q. And describe to the panel what you mean by
6 the pumping action, what happened to that pipe because
7 of the equipment working in the area?

8 A. Heavy equipment, the distribution of the
9 weight on a solid surface, it pushes whatever is in the
10 soil.

11 Q. It actually came up, moved up toward the
12 surface of the, by the pumping action, the pipe actually
13 raised in the ground?

14 A. Yes, and it is a sideways movement too, some
15 of the pipe would also be sideways.

16 Q. An R & G employee told you about the
17 situation out there and told you there might be another
18 problem farther up, is that correct?

19 A. On the second leak, yes, sir.

20 Q. You had to dig down to find that?

21 A. Yes.

22 Q. And the soil conditions there were very wet
23 because of the weather, and the rain, and the snow melt,
24 and all that of the previous spring, correct?

25 A. I assume.

1 Q. In other words, the ground didn't become
2 saturated because of the leak in the pipe?

3 A. No, sir.

4 Q. The third leak, was that down under the
5 ground?

6 A. That one was two feet.

7 Q. So nobody could see that by just observation,
8 correct?

9 A. Not the third leak.

10 Q. Thank you.

11 MR. HOSECK: Any questions by Board
12 members?

13 MR. KRUEGER: Is it your opinion that the
14 leaks were intentionally concealed by the contractor?

15 THE WITNESS: On the second leak, I can't
16 say intentionally, because we had the first leak was
17 down, down hill. The first leak was down hill, and the
18 second one, of the second one, the first one was hit, we
19 had the water off, of course the water drained out of
20 this pipe down hill. So the second and third leaks were
21 uphill which probably would have very little water in
22 them, and there was heavy equipment that had, the dozer
23 was going back and forth when we came, and the
24 maintainer was cleaning it up, they were trying to
25 maintain the road, the pipe had been pumped up and out

1 and it had been sheared off, we were missing eight feet
2 of pipe. And I wouldn't say the operators intentionally
3 covered it up, there was pipe in the road and they were
4 working, but I would also say they knew that pipe was on
5 that side of the road, and the day before we had three
6 leaks in that same 300 feet of area, and they saw us
7 working there. It wasn't, I don't think, intentionally
8 covered up.

9 MR. GILLIGAN: I am Pat Gilligan. You
10 mentioned you had three leaks the day before, and
11 apparently the first leak on the 29th, a subsequent leak
12 on the 29th and the third leak after that. Were any of
13 those leaks were you notified by R & G, or how did you
14 know the leaks were there?

15 THE WITNESS: The first day on the 28th
16 at noon we were hit, we noticed, we were working with
17 our private contractor, we noticed the equipment had
18 stopped, they were a thousand feet from us, we noticed
19 the water, they maybe waved us down. That was kind of
20 they hit us, we saw it type of deal. We were right on
21 the job site when it happened. That was at noon, and
22 then at 5:30, six o'clock we were hit three more times,
23 and that was, I was notified by Jim Auen, and I believe
24 he was notified by R & G employees. R & G employees
25 called Jim, and Jim called me. That was the three leaks

1 that day. We had one at noon the 28th and three at
2 five, six o'clock on the 28th.

3 MR. GILLIGAN: The contractor was aware
4 of the pipe location?

5 THE WITNESS: Pardon?

6 MR. GILLIGAN: The pipe contractor R & G
7 was aware of the pipe location during the project, it
8 had been marked?

9 THE WITNESS: Yes.

10 MR. ANDERSON: On your first leak was
11 water visible on top of the ground when you got there?

12 A. The morning of the 29th, yes, sir, running.
13 It was on the shoulder of the road, it had been hit with
14 the disc, and that was the leak we fixed the day before
15 at noon. We covered it up so the gasketed pipe would
16 not blow apart again until we could get our new main put
17 in, and that was with water running down the road.

18 MR. ANDERSON: How much time elapsed from
19 the time your plant manager was notified of the lack of
20 water until you got to the site?

21 THE WITNESS: Jim must have received
22 calls at 7:20 or so, we were enroute, and we got, we
23 should have been -- when he called I was on the six mile
24 road probably five, six miles away, so from the time he
25 called me until the water was shut off was probably

1 eight, ten minutes.

2 MR. GILLIGAN: Was the contractor working
3 at that time when you got on site on that first leak?

4 THE WITNESS: Yes, sir.

5 MR. HOSECK: Any further questions by the
6 Board members?

7 MR. BIERSCHBACH: It sounds like they may
8 not have, it was a fairly short timeframe from the time
9 they may have cut it until you were on the scene, like
10 ten or twenty minutes?

11 THE WITNESS: I would say ten minutes.
12 We were enroute to the job site when I received the
13 call. We will have to ask Jim when he received the call
14 from the answering service, or when the customers first
15 started notifying him. We were enroute down there, and
16 like I say, we were about five miles, four miles north
17 of there when I received the call from Jim.

18 MR. ANDERSON: Were any subsequent calls
19 received by your answering service before you arrived on
20 the site from the contractor R & G?

21 THE WITNESS: I don't believe so. We do,
22 Jim has the records of all the calls from the answering
23 service.

24 MR. HOSECK: Any further questions by the
25 Board? There being none, do any of these questions by

1 the Board members prompt any redirect by you
2 Mr. Lammers.

3 MR. LAMMERS: If I may, just a couple.

4 RE-DIRECT EXAMINATION BY MR. LAMMERS:

5 Q. Again I want to be sure that when you arrived
6 that morning the first strike that you found was
7 obvious, it could have been seen by anybody looking at
8 it?

9 A. Water was running down the road.

10 Q. And you said that the notification to your
11 office came from a customer?

12 A. From a customer to the answering service
13 which notified Jim.

14 Q. From the time when the strike occurred until
15 a customer is out of water, how close are your nearest
16 customers from there, how long would that take in your
17 opinion?

18 A. The closest customers were half a mile I
19 suppose, quarter mile, half a mile away, and they could
20 still get water due to the hill draining back down to
21 them, the high spots, the water could drain back. So it
22 could be, depends on the hit, sometimes it is a while.
23 Time wise I really couldn't say on that.

24 Q. Are you talking fifteen minutes, thirty
25 minutes, or what is your best estimate?

1 A. Oh, I would say probably where the first
2 calls came in from, they were up the grade, but there
3 was hills higher to the east of them, so they were
4 probably getting fed back, ten minutes, five to ten
5 minutes.

6 Q. Do you know from previous experience when R &
7 G employees would start in the morning?

8 A. I guess I don't know their starting time.

9 Q. One thing I forgot to ask you was whether
10 your lines had been initially marked or flagged in terms
11 of location?

12 A. Our service department had been out there on
13 a One-Call ticket to locate, and our service department
14 does most of the locating before a project starts. I
15 believe they were out there a couple different days at
16 the start of the project.

17 Q. The line was entirely flagged along the six
18 mile route?

19 A. There were, on the first mile it is flagged,
20 and then when the equipment comes in sometimes when they
21 take the black dirt it is stripped off, but I believe
22 the service department was out and flagged that area, or
23 visited with the contractor.

24 Q. That's all I have.

25 MR. HOSECK: Recross, Mr. Schmidt.

1 RE-CROSS EXAMINATION BY MR. SCHMIDT:

2 Q. As I understand it, the first strike was
3 reported at about 7:20 a.m.?

4 A. Yes, sir.

5 Q. I believe the record will reflect that the
6 contractor started work each morning at about 7:00 a.m.,
7 would that agree with your recollection?

8 A. Yes.

9 Q. As far as you got a crew, I believe three of
10 you who were on this job at all times?

11 A. Yes.

12 Q. I believe you testified earlier that you
13 actually could visually spot the leaks yourself, you or
14 your crew, as they occurred, is that a fair statement?

15 A. Yes.

16 Q. Thank you.

17 MR. HOSECK: This witness may be excused.
18 Mr. Lammers, you may call your next witness.

19 MR. LAMMERS: I will call Jim Auen.

20

21 JIM AUEN,
22 called as a witness, being first duly sworn, testified
23 and said as follows:

24

25 DIRECT EXAMINATION BY MR. LAMMERS:

1 Q. You may state your name, please?

2 A. My name is Jim, last name is spelled A-U-E-N,
3 Auen.

4 Q. What's your residence address, Jim?

5 A. 6113 East 17th Street, Sioux Falls, South
6 Dakota.

7 Q. What is your occupation?

8 A. I am chief plant operator for Minnehaha
9 Community Water.

10 Q. And for how long have you been so employed?

11 A. Three years.

12 Q. Were you on duty on the 29th of July of 1999?

13 A. I was on call for that week.

14 Q. What were your duties that particular day?

15 A. In the event of any troubles either at the
16 plant or the distribution system I am on call 24 hours a
17 day for one week a month, and that was the week I was on
18 call.

19 Q. Did you receive a call in the morning of July
20 29 of 1999 with reference to an outage of water on the
21 six mile road?

22 A. Our answering service received a number of
23 calls from some of our customers, I forget the exact
24 number, it was five or six customers saying they were
25 out of water in the six mile road area.

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(Exhibit 2 marked For identification.)

Q. I show you first what has been marked as Exhibit 2. I ask you if you can identify what that document is?

A. This is a cell phone record for Dan Buss cell phone, I had called him at 7:22 in the morning notifying him there was a leak in that area.

(Exhibit 3 marked For identification.)

Q. Then I show you what has been marked as Exhibit 3 and could you identify what that Exhibit is, tell us what it shows?

A. This is just showing Dan's cell phone again, it was a call that I had called him.

Q. Is one of those Exhibits your phone and one Dan's phone record?

A. Right. I take that back. The first Exhibit you showed me is actually my cell phone showing me placing the call, and then the other is Dan's cell phone record showing him receiving the call.

Q. I notice it says detail of charges at the top and the number, and 336-1096 is whose phone?

1 A. That is Dan's.

2 Q. And 336 on Exhibit 2, the number 336-0194 is
3 whose phone?

4 A. That was mine.

5 Q. So can you tell the Board from those Exhibits
6 then what your records show in terms of when you first
7 received a call?

8 A. Approximately 7:20 I had received a call from
9 the answering service, and at 7:22 I had called Dan's
10 cell phone.

11 Q. What was the nature of your call from the
12 answering service?

13 A. Notifying me that there was a number of
14 customers out of water in the six mile road area.

15 Q. You said there were subsequent calls from
16 customers as well?

17 A. Right. Once we get three or four calls from
18 a cluster of people in the same area, we just tell the
19 answering service to keep recording, there is no reason
20 for them to call me for every person. There was
21 hundreds of people in that area, they didn't need to
22 call me for every person that was out of water in that
23 area.

24 Q. Then you in turn notify Dan as you testified
25 about the outage?

1 A. Right.

2 MR. LAMMERS: Offer Exhibits 2 and 3.

3 MR. SCHMIDT: No objection.

4 MR. HOSECK: They will be admitted.

5 MR. LAMMERS: That's all I have, thank
6 you.

7 MR. HOSECK: Any cross examination?

8 MR. SCHMIDT: No.

9 MR. HOSECK: Any questions by Board
10 members?

11 MR. ANDERSON: Do you have a record of
12 the answering service's receipt of calls?

13 THE WITNESS: Yes, sir.

14 MR. ANDERSON: Was there a subsequent
15 call that day for this first reported outage from R & G?

16 THE WITNESS: I don't believe so.

17 MR. ANDERSON: That's all the questions I
18 have.

19 MR. HOSECK: Any further questions from
20 Board members? Does this question by a board member
21 prompt any redirect, Mr. Lammers.

22 MR. LAMMERS: Yes.

23

24 (Exhibit 4 marked For identification.)

25

1 REDIRECT EXAMINATION BY MR. LAMMERS:

2 Q. Jim, I show you what's been marked as Exhibit
3 4 and ask you to identify that document?

4 A. This is record from the communications
5 service, our answering service, and a record of the
6 people that called in that morning.

7 Q. That would be on the 29th of July, 1999?

8 A. Yes, sir.

9 MR. LAMMERS: We offer Exhibit 4.

10 MR. SCHMIDT: No objection.

11 MR. HOSECK: It will be admitted.

12 MR. LAMMERS: That's all I have at this
13 time.

14 MR. HOSECK: Any recross, Mr. Schmidt.

15 MR. SCHMIDT: No.

16 MR. HOSECK: This witness may be excused.
17 Do you have any further witnesses.

18 MR. LAMMERS: We have no further
19 witnesses, we will rest.

20 MR. HOSECK: At this time, Mr. Schmidt,
21 you may call your first witness.

22 MR. SCHMIDT: Before I do, if I might for
23 the record, Your Honor, I would like to renew my motion
24 to dismiss at this time for the reason and upon the
25 grounds that the statute requires that there be a

1 knowing concealment or attempt to conceal for a knowing
2 and willful disturbance or break of the line. And what
3 we have here before us at this point in time is three
4 alleged incidents on July 29 at a time when the first
5 leak occurring roughly fifteen or twenty minutes after
6 the contractor starts work in the morning, and the
7 immediate call in from somebody, a repair. As far as
8 concealed, the utility having a three man crew on site
9 at all times, the witness testified that they could
10 visibly see the leaks themselves, and the law being that
11 if you have actual notice of an event there is no need
12 to have some technical, formal notice. In this instance
13 all three leaks were actually known by the utility in a
14 very timely manner, repairs were made to them. R & G's
15 own employee voluntarily mentioned that there might be a
16 problem on down the line. There is no evidence here of
17 a knowing, willful, concealment or attempt to conceal
18 any damage. We think that rather than proceed we would
19 like to have the panel consider the motion to dismiss at
20 this time. There is no evidence of any intent, of any
21 knowing action. The contractor was simply performing
22 the routine work. The witness testified there were
23 scrapers and there were discs and dozers out here
24 working on the roadway in the normal course of business,
25 nobody indicated in the testimony that anybody intended

1 to do anything, there is no evidence, and we would
2 sincerely ask that the complaint be dismissed at this
3 time.

4 MR. HOSECK: Response to that,
5 Mr. Lammers.

6 MR. LAMMERS: Yes, Your Honor, members of
7 the Board, I am sure you are all familiar with the
8 statute, but I want to re-read it if I may. It says if
9 any underground facility is damaged, dislocated, or
10 disturbed in advance of or during excavation work, the
11 excavator shall immediately notify the operator of the
12 facility, or, if unknown, the One-Call notification
13 center of such damage, dislocation or disturbance.
14 Nothing in there requires any willful, intentional act,
15 simply says if you have done some damage you have to
16 immediately notify the utility. And that's what we are
17 talking about here today. So we think the motion to
18 dismiss is entirely without merit, and that there was in
19 fact knowledge on behalf of R & G that they ignored
20 until our crew was on the site. They had the
21 opportunity, it was obvious that they had done the
22 damage, it had been flagged as the testimony indicated
23 the day before, and so they knew exactly where this line
24 was, and where the repairs had been made, and they did
25 the damage and ignored it. They just simply didn't

1 follow the statute, they didn't, as it says, immediately
2 notify the operator or the utility, and that's what we
3 are talking about. Thank you.

4 MR. SCHMIDT: If I might by rebuttal, I
5 would like to introduce as Exhibit A the statute.

6
7 (Exhibit A marked For identification.)

8
9 MR. LAMMERS: Sure.

10 MR. SCHMIDT: Mr. Lammers when he just
11 gave his argument only mentioned part of the statute.

12 MR. HOSECK: By the way, for the record
13 Exhibit A will be received.

14 MR. SCHMIDT: Exhibit A is SDCL 49-7A-12.
15 The part of the statute that wasn't mentioned is the
16 last sentence. And the last sentence says, and I quote:
17 The Board may assess a civil penalty of up to one
18 thousand dollars against any excavator who knowingly
19 violates this statute. And I would simply repeat here
20 that there is no evidence that the contractor knowingly
21 either damaged or concealed any leaks. We have got
22 three leaks on that day. The first was reported within
23 twenty minutes after the contractor started work, the
24 other two were not visible, were subsurface. The
25 contractor actually told the utility there are some

1 problems down the line here as soon as they saw them.
2 They were on the site at all times. We would ask the
3 motion to dismiss could be ruled on at this time.

4 MR. HOSECK: At this time I am going to
5 deny the motion. I think that the argument demonstrates
6 that there are issues of fact yet to be resolved here.
7 One of which is obvious as to what the contractor knew
8 or didn't know, what his intentions might have been, and
9 in that regard there is no evidence put on by the
10 contractor, nor has the contractor been subjected to
11 cross examination or any of the questions of the Board.
12 So at this point in time I am going to deny the motion.
13 Proceed to call your first witness.

14
15 GREG MATHIOWETZ,
16 called as a witness, being first duly sworn, testified
17 and said as follows:

18
19 DIRECT EXAMINATION BY MR. SCHMIDT:

20 Q. State your full name, please?

21 A. Greg Richard Mathiowetz.

22 Q. Spell your last name?

23 A. M-A-T-H-I-O-W-E-T-Z.

24 Q. Your current address?

25 A. 1101 South 1st Street, Marshall, Minnesota.

1 Q. Your occupation?

2 A. Vice-president of R & G Construction.

3 Q. What type of work does R & G Construction do?

4 A. Highway heavy construction, and private
5 developments, and utility work.

6 Q. And would you state your personal experience
7 in the construction business?

8 A. I have been involved all my life, it has been
9 a family business, and I graduated from St. Thomas in
10 1988 and joined my father in business full time. And
11 over the last twelve years I have slowly taken on more
12 responsibility to the position I am at right now. I
13 have done one highway project, and I have right now I am
14 in charge of estimating and helping coordinate some of
15 the work and public relations for our company.

16 Q. I take it you have been involved with a
17 number of projects over the years for grading on a
18 project with underground utilities present?

19 A. I have been in numerous projects since 1988
20 that I have been in charge of personally.

21 Q. Grading projects?

22 A. Grading projects, water main, sewer projects
23 on city utilities, just about a little bit of
24 everything.

25 Q. This particular project we are here on today

1 is called the six mile road project, is that correct?

2 A. That's correct.

3 Q. Tell the panel what you had to do with the
4 six mile road project from your first involvement?

5 A. You mean how we put the job? I guess what it
6 was is six miles of complete re-grading in Sioux Falls.
7 And basically it was a re-grade of six miles, and within
8 that re-grade there was an urban or a residential area
9 that had curb and gutter and some blacktop surfacing in
10 this residential area in the middle of the project that
11 had to be completely rebuilt from its present state.

12 Q. And this was a project let to competitive
13 bids?

14 A. Yes, it went to competitive bids, and I don't
15 know how many people bid on it, we were low bid.

16 Q. What was your role in the bidding process?

17 A. I did the, all the estimating and put the
18 majority of the bid together with a little bit of my
19 father, and I would decide on the final numbers, what we
20 actually bid, but I did all the preliminary work,
21 figured out the projection, figured out what kind of
22 sequence we would have to do to make the project work so
23 that we could beat the deadline of October 1st that was
24 on this project.

25 Q. When was the bid letting?

1 A. Some time in June, I would say approximately
2 the third week in June.

3 Q. Of what year?

4 A. Of June of 1999.

5 Q. You were the successful low bidder?

6 A. That's correct.

7 Q. What happened after the award of the
8 contract, what happened next?

9 A. The next thing we had is we had a
10 preconstruction meeting that Minnehaha County put on
11 where, like most projects of significance, you have a
12 meeting of the county, and the contractor and some of
13 the subcontractors. And it's an opportunity for the
14 utility contractors to come, voice their concerns, and
15 the contractor to voice their concerns with the utility
16 contractors and how it affects the sequence of the
17 project so that we can get and beat the, you know, what
18 my subs needed to have done so they could be possible to
19 bid it so that we would try to coordinate our work.

20 Q. Were the utilities present at that meeting?

21 A. Yes, they were.

22 Q. In fact, was the water company that filed the
23 complaint here today, did it have a representative at
24 that meeting?

25 A. Yes, they did.

1

2

(Exhibit D marked For identification.)

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Q. I believe there were minutes of that meeting, and is this what is marked Exhibit D a true copy of the minutes of that meeting?

7

A. Yes, it is.

8

MR. SCHMIDT: We would offer Exhibit D.

9

MR. HOSECK: Is that B?

10

MR. SCHMIDT: D like in David.

11

12

MR. LAMMERS: May I inquire of counsel who had prepared these minutes?

13

14

15

MR. SCHMIDT: They are prepared by the county. The owner's representative at the preconference.

16

MR. LAMMERS: No objection.

17

MR. HOSECK: Exhibit D will be admitted.

18

19

20

21

Q. Concerning the utilities, Greg, what is in the minutes of this preconstruction meeting? First of all, what was the date of the preconstruction conference?

22

A. July 7, 1999.

23

24

Q. And again with reference to the minutes, and based on -- you were present, is that correct?

25

A. That's right, I was present.

1 Q. Based on your personal recollections, what
2 was discussed at the preconference about the utilities,
3 and specifically the water utilities?

4 A. I guess usually one of the first things that
5 is discussed is how I am going to, how we would like to
6 proceed on the project, how we bid it to proceed on the
7 project. And my discussion was is that we wanted to
8 start on the south end of the project for numerous
9 reasons that I didn't need to go in to, but that's where
10 we wanted to start. And then the discussion went to the
11 utility contractors, and the issue that came up with
12 Minnehaha rural water, and I think the other rural water
13 company, but there was, they weren't nearly as
14 significantly involved, but the discussion came up that
15 they had none of their utilities moved other than on the
16 north, approximately the north mile, which was the
17 majority of that was new location because they are doing
18 a realignment change in the north end, and they would
19 also, not only did they have to relocate, they also
20 wanted to add or upgrade their, a new line in the Pine
21 Lakes Addition which was approximately two and a half
22 miles up from the south end, which was curb and gutter
23 work, storm sewer work, and some changes, because it
24 was, right now it was a ditch, and it was going to be a
25 curb and gutter area when they were done. So it took a

1 little bit more coordinating.

2 Q. Was there any discussion about lines, new
3 lines being installed that were not shown on the plans
4 that you studied and relied on for purposes of making
5 your bid?

6 A. The line in the Pine Lake Hills Addition was
7 not one that we, that I had noticed, and my
8 understanding from them was a line that they wanted to
9 add before we did the work, or they needed to do before
10 we did the work, because with the new grade changes and
11 the curb and gutter area they needed to get that in, or
12 otherwise they would disturb a lot of the new work that
13 we did which would be very expensive.

14 Q. Did you accommodate the water company's
15 request and needs for the new line in relationship to
16 the scheduling of your work as you had planned it based
17 on your bid?

18 A. Yes, we did. In our minutes it talks about
19 we wanted to proceed to the north in different
20 stretches, and one of the different stretches it says in
21 here the Pine Lake Hills was going to be one of the
22 first stretches. The other thing that we had to do is
23 the south end is a hillier stretch, the hilliest, not
24 five foot, you have fifty to a hundred foot dips, and
25 hills go back and forth, and what they are doing is

1 trying to make a nicer drive line, and on the south end
2 where we had to relocate and specifically in the south
3 mile and a half where the issues come up about the
4 break, for them to relocate their line they would have
5 to go through hills which would take significant cuts to
6 get their line in, which was going to be their issue to
7 deal with. Well, the issue came up in July, we didn't
8 know that was an issue, we had two options, we could
9 either stop and try to find another job, or we could try
10 to work together. And by doing so we would have to
11 sacrifice doing some things out of sequence, because the
12 way to speed it up was to have us cut the hills down
13 which would have saved them excavation to relocate the
14 line. The problem that that created was, to get rid of
15 the excavation and all the backfill that the rural water
16 needed to be relocated, we had to work around their
17 existing line that was in the old road bed, because this
18 was a job where you took it from the north end of the
19 first mile and you hauled it to the south end. So the
20 only way to get rid of the dirt to cut that hill down
21 for them to work in we needed to get it down to the
22 south end, and with water running down the ditches from
23 the springs the only way was on the road. There was no,
24 you know, you either cut it down and save them time to
25 help speed it up and haul along and work around their

1 existing lines, or the job just stopped and they had to
2 dig through the hills. It really wasn't an option to go
3 to the north end, because it wasn't that much quantity
4 on the north end. And we had looked at that north end
5 also as being, we wanted to get the area where there was
6 residences along the project. The north, end as you got
7 the last two miles, there were very few people that
8 would be impacted, which meant that there was not as
9 much risk if the weather would change in the fall. So
10 the obvious question was to start on the south end where
11 you had a lot more people to deal with so that they
12 wouldn't be impacted if the job dragged on later in the
13 fall where you would lose drying conditions. We
14 estimated certain specs for stability on the road for us
15 to get paid, so we needed the best drying weather, and
16 obviously the best drying weather is July and August and
17 September, and we wanted to take full advantage of that.

18 Q. As I understand it then, you actually changed
19 your job sequencing to accommodate the water company's
20 needs for cutting out and saving them the time and
21 effort to relocate their pipe, is that a fair statement?

22 A. Yeah, we, I guess the way we looked at it, it
23 was we needed to do the job, and the best situation for
24 both parties is to proceed for us to cut the hills down
25 and try to speed up their job which would allow us to

1 get our job done, and but we did incur costs because we
2 were doing it out of sequence from what we originally
3 figured we would be able to do it.

4 Q. This is all on the south end?

5 A. Correct, the bigger problems were for the
6 most part on the south end, other than I think it is
7 Madison Street there was one area, but that was for the
8 most part at an intersection, it was limited.

9 Q. The incident we talked about here on July
10 29th, tell the panel what you were doing on the job on
11 July 29th, where you were working?

12 A. What we were doing was we were cutting down
13 the back slope, and we were, like I said, the first day
14 that Dan said they had the three previous leaks to the
15 29th, we were doing the long haul, we were cutting the
16 back slopes down, hauling the material to the south end.
17 And what happens is you pump it up, you don't know how
18 much you are pumping it up, because they really couldn't
19 tell us if it was, you know, two foot in the ground or
20 four foot in the ground for sure, but we knew it was at
21 least two foot. So until you visually have a leak, you
22 don't have, you do not know if it was leaking. Like I
23 said, if we didn't work around it, there was no way to
24 do the back sloping. The morning where we hit it, that
25 morning is where we did have a disc in there, and the

1 idea is first thing in the morning -- every night we
2 have to have the road bladed up, we have to have access
3 to the people at night so when they come home from work,
4 and the first thing in the morning they have to have
5 access, so it has to be bladed up, or use the
6 maintainer. So the first thing we do in the morning is
7 we will take a disc, we disc it open so it can dry. If
8 you put any material, you have to do it in layers and
9 you have to get a certain amount of stability. What
10 happens is through the course of the day after they
11 fixed it on the 29th it must have pumped up, and that
12 morning when the disc went in the disc will go in the
13 ground approximately six to eight inches depending on
14 the material, and they hit the line. Where he talks
15 about twenty after 7:00, we do start at seven o'clock in
16 the morning. We don't, you know, the only way we can
17 get access to get a phone call to the rural water system
18 is with our foreman, and the first thing he does in the
19 morning at seven o'clock is he is going through the job
20 to make sure everybody has gotten going, and everything
21 is working decent, and the first mile and a half. So if
22 he starts on the south end at 7:00 and the disc is
23 starting, he goes to the north end, he is checking on
24 them. When I say north end, the north of that first
25 mile, mile and a half. By the time he turns around and

1 comes back it can take a half an hour, and that's
2 assuming that nobody stopped to really talk to him. But
3 usually every morning, you know, the county engineer was
4 on the project, and if another equipment operator, the
5 scraper or dozer had a question, he stops to deal with
6 that specific question. So there is no way that we
7 could have called until the foreman got back there.
8 Because our discs don't have, we do not have cell
9 phones, neither do our grade men. So I don't think it
10 is not unusual to have fifteen, twenty minutes elapse
11 before our foreman gets back and then finds the number
12 to make the phone call. So that is kind of the way you
13 usually go. I wasn't there specifically that morning,
14 but that's kind of the sequence. But it was a disc that
15 hit it.

16 Q. After this allegation came forward did you
17 make a personal inquiry of your employees, Greg, to
18 determine what had gone on that day?

19 A. Well, it goes back to, you know, I have, when
20 I was told about it that morning from Doug, I asked him
21 what had happened, and --

22 MR. LAMMERS: Object, hearsay.

23 MR. HOSECK: Sustained.

24 Q. To your knowledge, based on your operations
25 as you knew and understood them, was there any intent on

1 the part of your company or any of your employees
2 knowingly to conceal any leaks on July 29th, 1999?

3 A. There is no advantage to allowing the water
4 to continually leak. I mean what advantage is there to
5 allow the water to continue you to run when we are
6 trying to dry the job with a disc, what advantage is
7 there? There is absolutely zero. Wouldn't even make
8 sense, because eventually the fifteen minutes or an hour
9 you still have a leak, so the best thing to do is get it
10 fixed. Like I testified earlier, what made this job
11 very tough was not only do we have to coordinate our
12 work and our subs with the utility contractor, this all
13 had to be done while allowing uninterrupted access to
14 the local people, which made it very difficult, because
15 there was a lot more than just two of us that we were
16 trying to dictate back and forth. So we were trying to
17 keep a good relationship between the local people and
18 ourselves. So to cut somebody out of water and not tell
19 anybody, I mean it doesn't make sense.

20 Q. So in your opinion did you or anyone in your
21 company knowingly or intentionally cut the water
22 company's lines on or about July 29, 1999?

23 A. Not that I am aware of.

24 Q. And when you were on the project did you see
25 the water company employees on the project from time to

1 time?

2 A. Yeah, I mean when we first got down there and
3 started on the project, you know, they were down there
4 working side by side, you know, in a short area.
5 Sometimes when you are there, you know, you are working
6 one side, they would be working on one side and we would
7 be working on the other side of the road. We were
8 working right next to each other. It was almost, other
9 than different uniforms, we were working together. I
10 mean there was no, we talked about our guy making a
11 comment to him that we thought we had a leak, it's
12 because when you saw somebody our guy knew that is what
13 he was doing, so when something came up that he saw he
14 would tell them.

15 Q. Were you ever told by anybody in your company
16 that there was ever any leak that went unreported?

17 A. No.

18 Q. And did you give any instructions to your
19 employees concerning leak reporting?

20 A. If there is ever a rural water or an electric
21 company or telephone company, what they are supposed to
22 do is usually tell somebody in charge, and usually the
23 first one they see is either a grade man with a pickup
24 who has a two-way radio or the foreman, and usually the
25 foreman is the one who has the phone and he has to make

1 the call. You know, so whichever one of the first two
2 they see, and usually either he will have a number, or
3 if he doesn't get through he will call our office and
4 they will also try to make the phone call, and whoever
5 reaches them first. If they find somebody on the
6 project that is working there and they get that first,
7 then we won't place the call because we have already had
8 that dealt with on the project.

9 Q. The work that was being done on July 29th,
10 1999, was that being done in the usual and customary
11 manner with which that work would normally be done? Is
12 there anything unusual in how your company did the work
13 that had to be done that day?

14 A. No, not really. All I can say, it was a
15 really wet, unstable project that, you know, the south
16 end was done different than the north end, because for
17 some reason the north end was just bone dry and the
18 south end was wet, but until you actually dug in to it
19 you didn't know any different. So you did what you
20 thought you could do to schedule for the day so at the
21 end of the day all the local people had access and you
22 made progress if it was that wet. That was the goal
23 every day, and we started at seven o'clock in the
24 morning and we tried to have it cleaned up by seven
25 o'clock at night, and I guess we went each day by day.

1 Q. Was there any way of knowing visibly whether
2 or not a pipe is being pumped up?

3 A. Not without, I mean unless you have a leak.
4 Where Dan was talking about flags, I will say that he
5 did flag it, but when you are doing a work in progress
6 and you are trying to go from abandoning an existing
7 line to putting in a new line, you know, for example
8 what's in the shoulder of the road, if a local person
9 wants to get through, if they want the road smooth, you
10 blade it off, and if the flags are there, you are
11 blading over the top of the flags because the people
12 have to have access. So whether or not the flags were
13 there that morning, that I guess Doug would have to
14 testify. But if you go back and forth, you are
15 continually upgrading the flags on an existing line,
16 there is no other way to do it unless you have the line
17 moved before we get there, then the issue is moot
18 because it's all moved and we wouldn't have to worry
19 about it.

20 Q. Did you prepare a list of the One-Call
21 requests you made?

22 A. Yes.

23 Q. On this project?

24 A. I looked in our file and pulled all the
25 one-calls that we called during this project while we

1 were working there.

2 Q. And that list was marked as Exhibit B?

3 A. Yes, it is.

4 MR. SCHMIDT: We offer Exhibit B at this
5 time.

6 MR. LAMMERS: What does this represent?

7 Q. A matter foundation, would you state what
8 this is?

9 A. These are the local tickets that we were
10 responsible to call and we do it. Usually what we do is
11 we will do an initial One-Call for the project. Even
12 though we had the preconstruction meetings, we give them
13 their official One-Call notice besides the
14 preconstruction meeting. The previous tickets are we
15 moved from south to north through the project, because
16 it is a long project, we don't want to forget any
17 facility that may be, for example, I don't know the
18 exact names, but there are some that were not on the
19 south end, but you might run in to them in the middle or
20 the north end. So as we go through we will call a new
21 ticket in to just kind of bring up to date that we are
22 coming in to this area, you know, we didn't forget about
23 you, and you didn't forget about us. So that's the
24 tickets showing that as we progressed the different
25 times we called in One-Call tickets to verify either

1 existing or the relocated lines.

2 MR. LAMMERS: No objection.

3 MR. HOSECK: Exhibit B will be admitted.

4 Q. With regard to Exhibit B, what procedure is
5 followed concerning the One-Call contact?

6 A. Usually what we will do is within our office
7 I will give them the project, and because of the long
8 project it was hard to write it all out on one ticket,
9 so the first one you will see on 7-7, that basically is
10 what it took to get it written out so that each, the
11 whole job was covered. So that's why you will see six
12 tickets there, that basically just for an overview the
13 job is we are getting started, here is the tickets. And
14 occasionally some people aren't on the One-Call, they
15 weren't notified at the preconstruction, somebody wasn't
16 aware of it, you put this back in just to make sure
17 there isn't some utility that nobody is aware of. So
18 that's what we do. Then we have two different ways, I
19 guess, that we have done it. You just put in that you
20 want it marked, they have 48 hours from the date, or
21 from when you put it in to go through and flag it, or
22 you can have a meet in which you meet on that date and
23 then you have, they have 48 hours to mark it from the
24 time that we have the One-Call meeting.

25 Q. Were there any other -- what other utilities

1 were on this project?

2 A. A couple different telephone companies, an
3 electric company, another rural water company, and I
4 think cable TV was in the residential area.

5 Q. Did you have any problems with any of these
6 other utilities in this project?

7 A. Not to this extent. There was the electric
8 company had to do some moving, but we worked together.
9 They had the same problems because there were big hills,
10 so we worked together so they could get it relocated in
11 a reasonable manner.

12 Q. Any complaints from how you dealt with any of
13 the other utilities on this same project?

14 A. Not that I was made aware of by the utility
15 themselves or Minnehaha County.

16 Q. In fact, until you received notice that
17 Minnehaha Water was filing the complaint with the
18 One-Call Board for the proceedings we are here today,
19 have they ever directly contacted you about any problems
20 such as alleged here?

21 A. No, I was never directly contacted by the
22 rural water. I was only, when this issue came up about
23 hitting them this day, I got a call from Bob Meister
24 from Minnehaha County, and he wanted me to address the
25 concern that John had made known to Bob, and what to do

1 with hitting the lines, if there was something we could
2 do to try to minimize the impact, and if I could come
3 down and help deal with it so that John would be
4 satisfied so that he wouldn't get a phone call. So I
5 came down and met with John.

6 Q. When you say John, you mean John Buss?

7 A. John Buss. We discussed different things,
8 different points of view, different interpretations, and
9 I guess after we agreed on some, disagreed on others,
10 but I think when we left the meeting we were on the same
11 page. And I think after that I think everything went, I
12 guess from my point of view, I guess I think everything
13 was, went good from that point on. But at that point we
14 also were to the point where the majority of the work
15 where we were really, where it was difficult to work was
16 also done. So I don't know if it was our discussion
17 only, or if it was where we were at that point in the
18 project, because July 29th, I think we started the 12th
19 of July, you are also talking two and a half to three
20 weeks into the project.

21 Q. Did you feel after that meeting with Mr. Buss
22 that matters had been taken care of?

23 A. I thought we were on the same, I thought we
24 were on the same page, and that if he had another
25 concern I guess I felt that he would give me a call

1 directly so we could have it dealt with, because I was
2 not there daily. I was, I would go down whenever I felt
3 the need that I should be there, and if that wasn't
4 enough, something came up, something came up that he
5 would call me, and I think that's what we accomplished
6 in that meeting.

7 MR. SCHMIDT: No further questions.

8 CROSS EXAMINATION BY MR. LAMMERS:

9 Q. Mr. Mathiowetz, you had referred to Exhibit D
10 which I think you still have there in front of you if I
11 am not mistaken?

12 A. Yes.

13 Q. Can you tell me how many of those One-Call
14 locates were to Minnehaha Community Water?

15 A. You don't put them directly to Minnehaha
16 rural water, you do a direct, basically anybody that is
17 in that area is either notified to mark it or a meet,
18 and if I don't need everybody, what will happen, we have
19 had where a utility will call and say we only have this
20 one little stretch, I can't be at that meeting. We
21 might say we are not going to be in that area, that's
22 what we were checking on. So it is not specific for
23 just rural water, it's for anybody in that area.

24 Q. Was one of those calls with reference to a
25 meeting you had called on July 12 with all the

1 utilities?

2 A. That is the one on the 7th, the first one.

3 Q. What was the purpose of that meeting?

4 A. Just to, because by state law we, you are
5 supposed to let anybody know on the project that you are
6 supposed to put a mark down for the project regardless
7 of the preconstruction meetings, and that's what we were
8 doing was with the One-Call, so that we did our, gave
9 our official notice that the One-Call was marked.

10 Q. So you had intended that all utilities meet
11 with you on July 12 on site, correct?

12 A. According to the One-Call we had that there
13 would be a meeting, right.

14 Q. And R & G didn't show up for that meeting,
15 did you?

16 A. I was 25 minutes late, that's correct. I did
17 see a guy from some of the utility companies.

18 Q. But by that time Minnehaha Community Water
19 was gone, weren't they?

20 A. To be honest with you, there were two
21 utilities, and I cannot specifically tell you which one,
22 which two were there. I know one of them was the other
23 rural water company, but I cannot remember if it was
24 Minnehaha, or if it was electric company. But also I
25 will say that what would have been discussed there was

1 that we were starting the project, and we were starting
2 on the south end, which is the same discussion that was
3 had at the preconstruction meeting. And I also said at
4 this meeting that I would have the One-Call going in
5 that day, and I would do that, but it still is we were
6 going to be starting at the south end.

7 Q. At that meeting you didn't show up when John
8 Buss was there?

9 A. At the preconstruction meeting?

10 Q. I am not talking about the preconstruction
11 meeting, I am talking about the July 12th meeting that
12 you didn't show up for when Minnehaha rural water was
13 there, right?

14 A. Yes, I was 20 minutes late, that's right.

15 Q. In terms of where you were supposed to start,
16 the plans called for you to start at the north end, did
17 they not?

18 A. No, that is not true. It did not tell us
19 that we had to start on the north end.

20 Q. Isn't that the way the plans were marked
21 sequentially, to start at the north end?

22 A. That means nothing. Just because you start
23 at zero station, that's the way they surveyed, it does
24 not mean that's the end I have to start on.

25 Q. Well, but you told Minnehaha Water, did you

1 not, that you wanted to start at the south end for your
2 own convenience because that's where your gravel pit and
3 so forth was?

4 A. No, that is not correct. Minnehaha, my
5 subcontractor was Dakota Contracting, and he had three
6 access points because his pit allowed him to go up and
7 come in on any of the Highways 26th, 38. I think is the
8 way it is, sometimes they are highways and sometimes
9 streets. And a third blacktop, I can't think of it,
10 they could come in from one of the three. I was for us
11 starting on the south end because that was the heavy
12 grading and the most residential area.

13 Q. In this particular area where these strikes
14 took place there weren't any residences there, were
15 there, they were at least a half a mile away?

16 A. There were some on the south end of that area
17 where that place, there were people on the south end of
18 that.

19 Q. About a half a mile away?

20 A. The first one was about a thousand feet, and
21 the next one I suppose was approximately a half a mile,
22 but the people did not want to drive through on the
23 township roads to go around, they wanted to go north to
24 the closest way to the blacktop road, so they had to go
25 through this area.

1 Q. Minnehaha water had marked all of their lines
2 previous to your starting your construction, right?

3 A. I don't know if they had them all marked. I
4 know they started marking on the south end, and at the
5 preconstruction meeting when we were talking about
6 getting started they said they had, I think it was
7 Winter Brothers, I don't know if they come from South
8 Dakota, that was the utility contractor. They were
9 going to get lined up to start immediately, because this
10 was a big project to get started on, and they had asked
11 where we were going to start at the preconstruction
12 meetings.

13 Q. Those lines were marked horizontally as well
14 as vertically, were they not?

15 A. Not vertically, they only measure horizontal
16 within either eighteen inches or two feet approximately
17 they put the flags, not vertically.

18 Q. Did not the flags show the depth of the pipe?

19 A. On some areas -- I guess I don't remember
20 seeing depth. If it was, I have never had it yet where
21 they have been perfect. Usually they won't mark that,
22 because if they are off a little bit.

23 Q. I am not talking about what usually happens,
24 I am talking about what did happen?

25 A. I do not remember seeing it written on the

1 flag. I cannot remember that.

2 Q. You mentioned that there were no complaints
3 from other utilities, is that correct?

4 A. Not that I gotten in a letter or phone call
5 from the utility.

6 Q. Well, didn't you also grade out the
7 electrical lines owned by Sioux Valley Electric at that
8 same point?

9 A. We did. What do you mean by grade out?

10 Q. Well, you struck and took out and damaged
11 their lines?

12 A. We did hit a pedestal of Sioux Valley that
13 was up in the corn, and our guy did make, it was an
14 accident, and he did take that, but I guess other than
15 that, no, we didn't.

16 Q. They did in fact make a complaint against
17 you, and they also filed a bill with you, did they not,
18 which you paid?

19 A. I do not remember a bill for hitting that
20 pedestal.

21 Q. You don't recall that?

22 A. No, I do not.

23 Q. It could have happened, but you just don't
24 recall?

25 A. I do not deal with a bill. That is with our

1 controller. Normally I am made aware of a bill to ask
2 if that did happen, and I do not recall that. I do
3 remember hitting that, and I can, you can ask my foreman
4 more about that, because he is the one that dealt with
5 them, but I do not recall a bill.

6 Q. You mentioned that you had not been contacted
7 by Minnehaha Water about these problems?

8 A. That's correct.

9 Q. But in fact Mr. Buss did show up on the site
10 and talked with you and Mr. Weber, another one of your
11 employees, about the previous strikes that had taken
12 place the week or two before?

13 A. I only talked to John on that day when Bob
14 wanted me to come down, and I do not recall the date. I
15 don't know if it was the 30th, you know, the 29th, the
16 1st, I do not remember that date, because I didn't know
17 it was pertinent, but I do remember meeting.

18 Q. Did Mr. Buss not explain to you that he was
19 very concerned about the way these strikes had taken
20 place and the fact that there were so many of them?

21 A. Yes, he did.

22 Q. That it had to quit, it had to stop?

23 A. Yes, he did, but I also told him I don't
24 think you completely understand the situation that is
25 causing these problems.

1 Q. So he did contact you and you did discuss
2 that with him, is that correct?

3 A. He did not contact me. Bob contacted me, and
4 I met with Bob, and then John came out later. It wasn't
5 a prearranged that Bob called John to come out while I
6 was there to meet with Bob to discuss it. John came on
7 the project and I drove down and talked to John, it
8 wasn't John giving me a phone call to discuss it.

9 Q. But John made it very clear to you that this
10 kind of activity had to cease, isn't that correct?

11 A. Yes, he did say that he was concerned about
12 it, and he questioned why it was happening, and I don't
13 think he completely agreed with me that the pumping
14 wasn't an issue. And like I said, I think after that
15 discussion I think we were on the same page, if there
16 was another instance after that, that he would call me.
17 But like I said, that was actually we were basically
18 done in those areas also. I don't know if that
19 discussion is what really solved the problem.

20 Q. So all of this is interesting background, of
21 course, and the Board deserves to know about it, but the
22 fact remains is what we are here today to talk about is
23 whether or not on the 29th day of July of 1999 your
24 people R & G Construction company struck a line owned by
25 Minnehaha Community Water Corporation and failed to call

1 in the notice?

2 A. I think I answered that in my discussions. I
3 guess I can go through that again.

4 Q. You said you made no call, you gave them no
5 notice?

6 A. I said that that morning on that first one
7 that normally what happened is the disc hit it.

8 Q. Excuse me, you weren't there that morning?

9 A. No, but as I said, you have to go
10 specifically to that to him.

11 Q. All I am asking you is whether you know
12 pursuant to that strike early morning July 29 whether R
13 & G notified Minnehaha Water, yes or no?

14 A. And I can't tell you that, no. I can't tell
15 you that.

16 Q. One way or the other, you don't know whether
17 it happened or it didn't happen?

18 A. I know it happened. I know I can't tell you
19 that Doug made the phone call, because I don't know if
20 he found Dan before he had time to make the phone call,
21 I can't answer that question.

22 Q. Thank you, that's all I have.

23 MR. HOSECK: Questions by Board members?

24 MR. ANDERSON: You had mentioned once you
25 had a foreman on the job you also had a grade man on the

1 job?

2 THE WITNESS: Right.

3 MR. ANDERSON: Who had a radio?

4 THE WITNESS: Yes.

5 MR. ANDERSON: Where was your grade man
6 on the morning of the 29th?

7 THE WITNESS: I cannot tell you that
8 because I was not on the job. I don't know where he
9 was, if he was in the next half mile with the scrapers.
10 Usually the grade man isn't working with the disc, but I
11 can't answer that where he was at specifically. If he
12 was right there or if he was down a half a mile where
13 Doug was, I can't tell you that. He will have to answer
14 that. But I will say that if it happened at 7:10, by
15 the time the disc person probably realized it and told
16 the grade man and he walked over to where the truck was,
17 because he couldn't drive through the mud very well, I
18 don't know where he parked, he had to walk to it, radio
19 Doug, Doug would have to look up the phone, doesn't seem
20 very likely you are going to call within fifteen
21 minutes. Maybe I am wrong. He can answer that.

22 MR. HOSECK: Further questions by Board
23 members.

24 MR. GILLIGAN: You testified that you
25 were concerned about keeping local traffic access?

1 THE WITNESS: Yes.

2 MR. GILLIGAN: And working the roads to
3 dry it out. Primarily your disc then would have been
4 working the road surface and not necessarily on the
5 shoulders?

6 THE WITNESS: The way it was there, he
7 would basically be working the whole road and the
8 maintainer would be working with the disc so you have
9 access. Usually what happened is the disc is working
10 the area and leave an area that would allow for the
11 person to get through, and then when the area they
12 disked would dry they would move that road from maybe
13 one side to the other side and disc that area. Once it
14 got stable enough, then they put the next lift of
15 material in and start doing the same process. The, you
16 are working back and forth.

17 MR. GILLIGAN: The disc was primarily
18 working to dry the road out for local traffic?

19 THE WITNESS: No, sometimes the surface,
20 because it was so wet, we could not dry it fast enough
21 to work just in a quarter to a third of a mile. So we
22 were working in a mile to a mile and a half area so that
23 we can dry the fill areas. It was so saturated and it
24 was a silty clay, it wasn't a good clay, and that's why
25 we had the water problems, because the water would go

1 through the silt. So we had to work numerous areas, and
2 at the same time cut back slopes down for rural water to
3 put their new line in. Otherwise their location they
4 would have been cutting 25 feet, 20 to 25 feet to get,
5 you know, back, which would have taken a while. I mean
6 if we would have one, that is a lot of material.

7 MR. HOSECK: Further questions by Board
8 members.

9 MR. KRUEGER: If you were disking at that
10 location, does that mean you were close to finish grade
11 then at that point in time?

12 THE WITNESS: No, not necessarily, just
13 getting ready for more lifts. It was very wet. The
14 ditch on the west side of that stretch from the
15 residential area all the way up to the highway there was
16 water running through the ditch. I mean it was, you
17 could see it coming out of the side of the hill and it
18 was running down the ditch, and that's what that was.
19 That was also the same site they had to relocate their
20 lines.

21 MR. KRUEGER: Is it possible since you
22 knew that those people were, the rural water were going
23 to be working there anyhow, that your guys may have just
24 been figuring that they would be showing up within five,
25 ten minutes and would notify them then?

1 THE WITNESS: From my personal opinion,
2 yes. They want to make it sound I guess, you know,
3 grading is not an exact science, and I guess when you
4 are working together, I guess you hit the line, five
5 minutes, we knew that Dan, they were there every day,
6 they were working side by side. I can't go in to what
7 Doug was going into his mind, but by the time I would
8 have called him and went back to Dan, Dan I am sure
9 would have been there, because I know he was there every
10 day. So I guess specifically I suppose whether he could
11 have called it in five minutes earlier, you know, I
12 guess I don't know what Dan does, what they were talking
13 about.

14 MR. CHAMBERS: The maintainer in the area
15 and the disc, the operators of those devices don't have
16 a radio in those vehicles, or a phone, or any means to
17 contact anybody, correct?

18 THE WITNESS: No, they do not. I guess
19 it would be not cost efficient. I mean be a huge phone
20 bill if we have phones in our trucks, and I guess they
21 don't travel that far that usually within fifteen to
22 twenty minutes somewhere there is usually contact with
23 the foreman, there is really no need to have one.
24 Usually if they break down or something would happen,
25 they stop and wait because it is not usually that

1 critical, or another piece of equipment would see them
2 and go down the line and notify the foreman if there was
3 something that needed to be told.

4 MR. BIERSCHBACH: If somebody were
5 injured or hurt real bad how would they get help?

6 THE WITNESS: I mean if the grade, if the
7 disc, something happened, was hurt, you know, the only
8 way something like that would happen is if you tipped
9 over, then the blade operator is there. I mean it is
10 kind of the same thing with your kid, you can't, I can't
11 have a foreman with a pickup on top of them every minute
12 watching them. I mean somewhere you have to have some
13 common sense, and I guess, you know, most things are
14 common sense. I guess you try to be the most efficient
15 you can be, and I guess accidents happen, and I guess we
16 would be there shortly, but to say that we watch them
17 every minute of the day, I guess we don't do that. We
18 have a certain amount of trust in our employees. That's
19 why we have a safety meeting every spring, and
20 occasionally we will have a talk at the end of the year
21 about safety, and that's kind of what that is trying to
22 address.

23 MR. HOSECK: At this time I will call
24 about a ten minute break.

25

1 (Whereupon, a short recess was taken.)

2

3 MR. HOSECK: We will go back on the
4 record and we are in the phase of Board members asking
5 questions. I think just before the break there had been
6 a request from Board Member Gilligan to ask a further
7 question, so proceed, please.

8 MR. GILLIGAN: The incident in question,
9 would it be reasonable to assume that your people were
10 aware where the water line was located?

11 THE WITNESS: I think it would be
12 reasonable to say they knew it was in the roadway. I
13 don't think it was reasonable to expect that it would be
14 in the top six inches. For the disc to hit it, it can't
15 go in much more than six inches. So I don't think they
16 reasonably expected it to be in the top six inches of
17 the road. After they had put fill over it the day
18 before, like Dan had testified, they put fill over the
19 top of it to cover it, I think the assumption is made
20 they are going to grind the surface of the road and
21 didn't realize they put it pumped back into the six
22 inches. I can't speak for them, but that would be my
23 assumption.

24 MR. HOSECK: Further questions by Board
25 members? Do any of those questions prompt any redirect?

1 MR. SCHMIDT: No.

2 MR. HOSECK: Any recross, Mr. Lammers.

3 MR. LAMMERS: No.

4 MR. HOSECK: This witness may be excused,
5 you may call your next witness.

6

7

BOB MEISTER,

8 called as a witness, being first duly sworn, testified
9 and said as follows:

10

11 DIRECT EXAMINATION BY MR. SCHMIDT:

12 Q. State your full name, please?

13 A. Bob L. Meister, M-E-I-S-T-E-R.

14 Q. Current address?

15 A. 4704 East 36th Street, Sioux Falls, South
16 Dakota.

17 Q. What's your present job?

18 A. I am superintendent of highways for Minnehaha
19 County.

20 Q. How long have you held that job?

21 A. I have been in Minnehaha County nine years.

22 Q. What's your, you say for nine years in this
23 position?

24 A. Yes, I was highway superintendent for Union
25 County for eighteen years prior to coming here.

1 Q. What was your relationship to this six mile
2 road project?

3 A. Six mile road project was a project brought
4 forth by Minnehaha County Board of Commissioners for
5 total reconstruction, I was in charge of the project for
6 my department.

7 Q. You handled the project bid letting?

8 A. Yes, sir, we did. We let the project for
9 bids on June 14, 1999.

10 Q. R & G Construction of Marshall was the
11 successful low bidder?

12 A. They were the low bidder of five bids
13 received, yes.

14 Q. Were you present during the time of the
15 preconstruction meeting?

16 A. Yes, sir, I called the preconstruction
17 meeting.

18 Q. You prepared the minutes, I believe?

19 A. No, sir, I did not prepare the minutes.
20 Wilsey & Associates who was our contract engineer
21 prepared the minutes.

22 Q. Those minutes accurately reflect what
23 happened at that meeting?

24 A. To the best of my knowledge, yes, sir.

25 Q. You recall any independent conversation

1 particularly about the water utility at the
2 preconstruction?

3 A. Yes, there was a great concern in the area
4 what we have been referring to this morning in that that
5 particular water line was on public right-of-way, they
6 were unable to obtain an easement for that particular
7 landowner to relocate off, they needed to cooperate with
8 the contractor, work alongside of him, take the big cuts
9 out so they could come in and install the new line.

10 Q. What's the name of that landowner?

11 A. Maurice Manifold.

12 Q. What was the problem?

13 A. Apparently according to Mr. Manifold several
14 years back there had been some bad relationships between
15 the Minnehaha County rural water and Mr. Manifold, and
16 he did not allow them to occupy his property.

17 Q. How did that affect the construction in that
18 specific area?

19 A. Well, obviously it really slowed us down.
20 This material was extremely wet, wetter than we
21 anticipated, and I am sure much wetter than the
22 contractor anticipated. We had to take some fairly
23 significant cuts out for them to relocate their line,
24 there was no place for the scrapers to run, both ditches
25 were wet, there was a real wet slough area, they had to

1 run alongside the line the best of their ability.

2 Q. Was there any choice but to run where they --

3 A. No, sir.

4 Q. So they had to run adjacent to the pipes?

5 A. Yes.

6 Q. What were the soil conditions?

7 A. Extremely wet. A silty loam clay, was not a
8 very stable material. We required the contractor to put
9 a disc into the operation to attempt to aerate and dry
10 out the material.

11 Q. Were you on the project from time to time?

12 A. I was on the project most of the time.

13 Q. You observed the work of the contractor?

14 A. Yes, I did.

15 Q. You observed the work of other contractors on
16 similar projects over the years?

17 A. Yes, I have.

18 Q. How would you characterize the work that was
19 being done by R & G on this project?

20 A. The work they completed was under our
21 direction and our specifications and it was successful.

22 Q. Did you consider R & G to be a conscientious
23 contractor?

24 A. Yes, we have had other projects with R & G
25 and been accomplished in a successful manner.

1 Q. Any problems with R & G Construction, their
2 attitude, performance on any other projects?

3 A. No, they have been very cooperative with me.
4 Been times we have had disagreements, but I will never
5 see a contractor that doesn't disagree occasionally, but
6 they always complied with our wishes.

7 Q. On or about July 29, 1999 were you on the
8 project?

9 A. I was on the project, yes.

10 Q. Did you observe the conditions that existed
11 in relationship to the pipe and the incident out there
12 where the pipe was struck, or the pipe leaked because of
13 pressure from the scrapers or discs?

14 A. Yes, I knew where the location was.

15 Q. What personal involvement did you have with
16 these incidents where the pipe was struck from time to
17 time?

18 A. I received several phone calls from Mr. Buss
19 indicating that he was extremely upset with the
20 contractor, that his individual he had on the project
21 indicated to him that the contractor had told his people
22 intentionally to cut the line. I told Mr. Buss I would
23 not tolerate that, that I would talk with the owner of
24 the company, we would get it squared away. I called
25 Greg and I asked him to come down, we were not going to

1 have any intentional cuts of any utilities. I went to
2 his superintendent and told him the same thing. If I
3 knew that they would intentionally damage any utility,
4 rural water, telephone or whatever, I would shut the
5 project down.

6 Q. Did you make a personal investigation?

7 A. Yes, I did. I called Mr. Mathiowetz and had
8 him come down. Mr. Buss happened to be on the job that
9 day, he had a press release issuing a boil water order,
10 he was out on the job, he was talking to the TV and
11 press, and Mr. Mathiowetz and Mr. Buss had their
12 conversation.

13 Q. You say Mr. Buss had the media come down?

14 A. Yes, he was on TV on rural water.

15 Q. What was the purpose of that?

16 A. There was a law that if you have several
17 lines broke he has to issue a boil water order for
18 people to boil their water.

19 Q. Based on your investigation and your
20 knowledge and experience on the project, and
21 observations of the work, were any of those cuts in your
22 opinion intentional?

23 A. Absolutely not.

24 Q. Why?

25 A. I will not tolerate intentional cuts, I will

1 not tolerate damage to public utilities.

2 Q. Based on the soil conditions and the work
3 area that was available to the contractor, and the depth
4 of the pipe and location of the pipe, in your opinion in
5 that specific area under those circumstances could this
6 have been avoided?

7 A. I don't think so.

8 Q. And were you aware that the utility, water
9 utility had employees on the job all the time?

10 A. Yes.

11 Q. And were they in the work area?

12 A. Yes, they were.

13 Q. And so in your experience were they timely
14 out there trying to fix these cuts?

15 A. Yes, they were. They were Johnny on the spot
16 whenever a brake was there. They were there trying to
17 get it fixed, it was a pretty cooperative effort between
18 the contractor and the water utility company.

19 Q. Were they doing this based on your own
20 observations to your knowledge?

21 A. To my knowledge, yes.

22 Q. Were there any complaints during this period
23 of time that any of these leaks weren't being timely
24 reported or properly reported?

25 A. No.

1 Q. Nobody ever told you that?

2 A. The only complaint was that they were getting
3 breaks.

4 Q. There was no problem as far as anybody was
5 concerned with the water supply company, or complaints
6 to you as the owner of the project that there hadn't
7 been a proper notice given?

8 A. No.

9 Q. Or were you ever told by anybody with the
10 water supply company that there was any attempt to
11 conceal the breaks?

12 A. No.

13 Q. Based on the time from your observations were
14 you able to tell if any leak was left open, or not
15 reported in a timely fashion, or observed by the water
16 supply people in a timely fashion?

17 A. I don't think so.

18 Q. Just so it is clear, as I understand it, you
19 are telling this panel there is a very limited physical
20 area for the work to be done in this particular spot
21 where these cuts happened, is that correct?

22 A. Extremely limited.

23 Q. In that regard, and based on your
24 observations and your experience in construction, and
25 out observing and inspecting construction, do you feel

1 that due to the way the conditions were, the site was,
2 the work was done, that there was any intentional act on
3 the part of this contractor to hit or break pipes?

4 A. No.

5 Q. Can you conceive of any reason why a
6 contractor would want to intentionally break a water
7 utility or any other utility's pipes or other wise?

8 A. I wouldn't have any idea why he would ever
9 break a water utility line in an area that the soil is
10 already so saturated it absolutely could not absorb
11 another gallon of water. It would be defeating his
12 purpose. We required him to put a roam disc in, put
13 sheep foot rollers in, all in an effort to dry out this
14 material, it was that wet. In 26 years of construction
15 I have never been on a project where the soil was this
16 wet.

17 Q. No further questions.

18 CROSS EXAMINATION BY MR. LAMMERS:

19 Q. Let me ask you, were you on the site early
20 morning 7:00 to 7:30 on July 29 of 1999?

21 A. The best of my recollection, yes, sir.

22 Q. Were you aware of the strike on Minnehaha
23 rural water's line at that time?

24 A. Not until later, I was on a different part of
25 the project.

1 Q. Are you aware that anybody from R & G
2 notified Minnehaha Water of that particular strike?

3 A. I am not aware that they personally called
4 them or went to them. I know Dan and his crew was
5 always there. It never seemed like there being over a
6 few minutes there was a break they weren't there trying
7 to get it fixed.

8 Q. Speaking of easements, did you have trouble
9 getting an easement from this same person, this
10 Manifold?

11 A. No, sir, I did not. I was, had been informed
12 that he was an extremely difficult individual to deal
13 with, I went to Mr. Manifold, was up front with him,
14 straight forward with him, and we got our easement from
15 him.

16 Q. When did you get that?

17 A. I am going to say probably February of '99.

18 Q. Has that been filed, recorded in the office
19 of the Register of Deeds?

20 A. No, not been recorded yet, they are still in
21 my office?

22 Q. Any reason they haven't been recorded?

23 A. Just haven't got them done yet.

24 Q. You say you had no problems on this project
25 with R & G?

1 A. I didn't have any problems with R & G other
2 than what you would expect on a normal project.

3 Q. Did you tell them on one occasion you were
4 going to shut them down because they weren't getting the
5 job done?

6 A. I told them on one occasion if the
7 superintendent didn't stay on the ground and pay
8 attention to administrative chores and not run equipment
9 I was going to shut them down. From that point on he
10 stayed on the ground.

11 Q. You say that the soil was extremely wet,
12 saturated at that time?

13 A. Definitely.

14 Q. What difference would it make if they struck
15 a line, water is going to run off anyway, isn't it?

16 A. No, it's going to make it that much work,
17 silty loam clings to the water and turns almost to the
18 consistency of flour and water.

19 Q. Are you saying to this Board that R & G had
20 no alternative but to strike Minnehaha Community water
21 lines nine times within a space of two or three days?

22 A. No, sir, I did not say that.

23 Q. Okay, I misunderstood you then. You say they
24 had not done this intentionally?

25 A. They did not do it intentionally, no, sir.

1 Q. Well, were they just terribly negligent then
2 when they struck those lines?

3 A. They could have been negligent. The reason
4 we are sitting here today is of rural water's failure to
5 relocate their line in a timely manner, they were given
6 over eighteen month's notice.

7 Q. Who gave them that notice?

8 A. My assistant sent them a letter in February
9 of 1998, said this project is scheduled for letting in
10 1999, grading plans will be available to you on your
11 request.

12 Q. May I see a copy of that?

13 A. Yes, sir.

14 Q. This doesn't bear a date?

15 A. No, it doesn't bear a date, I am sorry it
16 doesn't. SDCL 31-26-23 requires a ninety day notice.

17 Q. I understand that, but this particular
18 document isn't dated?

19 A. No, it is not.

20 Q. So after you said someone sent something like
21 that to Mr. Buss, assuming that you did, did you not
22 tell him later that were you having troubles with
23 easements, and if the people in that area didn't want
24 that project done you were just going to forget about it
25 and not do it?

1 A. Yes, sir, I did.

2 Q. So he wasn't aware then at that point in time
3 and thereafter that you were really going to do the
4 project, was he?

5 A. I don't know if he is aware of that or not.

6 Q. And you weren't aware that you were going --

7 A. We were always going to do the project.

8 Q. Didn't you just tell me if these people
9 didn't get their act together?

10 A. That's right, we wanted the word out on the
11 street out there that three land owners that give us
12 problems, we were going to pull the project out, and in
13 an effort to put the other landowners to go make these
14 three cooperate.

15 Q. When was the project really a go?

16 A. It was really a go in July of 1997 when my
17 Board give me instructions and budget for it, and get
18 the project let?

19 Q. But you just told me that after that time you
20 had told Mr. Buss that it was your intention if these
21 people didn't cooperate you weren't going to do it?

22 A. I indicated that to Mr. Buss, I also
23 indicated that to several landowners in an effort to get
24 them to go the other landowners to get cooperation.

25 Q. What you told me and told this Board that you

1 wanted him to spend thousands of dollars to relocate his
2 line for something that may never happen?

3 A. If he relocated his line Minnehaha County is
4 responsible for the cost of relocating that line.

5 Q. Did you tell Mr. Buss that?

6 A. He knows that, yes, sir.

7 Q. Did you tell him that in writing?

8 A. Not in writing.

9 Q. Minnehaha did relocate their line on
10 approximately one mile on the north end of this?

11 A. Yes, sir, they did, a year before.

12 Q. And could not have R & G started on the north
13 end?

14 A. They could have, we do not sequence the
15 operation for them. This particular project was open,
16 he could start at either end or the middle if he wanted
17 to, we didn't have a start or stop.

18 Q. Wasn't designed to start at the north end?

19 A. No.

20 Q. That wasn't shown on the plans?

21 A. It showed 00 only for stationing. It doesn't
22 say start at 00.

23 Q. Why did he start on the south end?

24 A. I believe he started on the south end because
25 he had the sequence the subcontractors in, we had curb

1 and gutter on the south end, he wanted to get that built
2 so he could get paid for it, the curb and gutter people
3 could come in, then move north. We had a large
4 subdivision on the south end called Pine Lake hills, I
5 can't tell you the exact number of residences in there,
6 but a number of residents that use that road north to
7 26th Street and then east in to town.

8 Q. You say you are not aware of any other
9 problems with R & G on this project. Are you aware that
10 R & G had struck the electrical facilities owned by
11 Sioux Valley Electric?

12 A. Yes, sir, very aware of it. The night that
13 they hit the transformer box their superintendent and I
14 had a very frank talk about safety. I would not
15 tolerate any more utility hits when it come to
16 electricity or anything else.

17 Q. When was that?

18 A. He probably remembers better than I do. It
19 was after these water hits. I can't tell you what date
20 it was.

21 Q. You were present that particular day, we have
22 it as August 3rd of '99 when John Buss was present, and
23 Mr. Weber and I think Mr. Mathiowetz and yourself?

24 A. Yes.

25 Q. And at that particular point in time John

1 Buss expressed to you his grave concern about the number
2 of strikes and that they may have been intentional, did
3 he not?

4 A. He expressed the possibility of being
5 intentional prior to that date.

6 Q. And did he tell you why?

7 A. Pardon me?

8 Q. Did he tell you why he thought they may have
9 been intentional?

10 A. Because one of his employees had told him
11 that one of R & G operators had told him personally that
12 he was instructed to intentionally hit the pipe.

13 Q. Was there anything said about grading on the
14 side of the road where the pipe was, do you recall
15 anything like that?

16 A. I didn't participate in the conversation with
17 Mr. Buss and Mr. Mathiowetz.

18 Q. So again if I understand you correctly,
19 Mr. Meister, R & G could have avoided each and every one
20 of these strikes, could they not?

21 A. Oh, I don't think so.

22 Q. Really?

23 A. No, I don't.

24 Q. They would have to take out the line?

25 A. No, I think the strikes they hit were purely

1 unintentional.

2 Q. I guess that wasn't my question. My question
3 was whether they could have avoided them?

4 A. Possibly could have avoided them. When you
5 get a condition where the ground is pumping two to three
6 foot both vertically and horizontally, I don't believe
7 that anyone has any control over that.

8 Q. Certainly they knew the instability of that
9 ground, did they not?

10 A. They had become aware of it after they
11 started on the project, yes.

12 Q. They knew that that equipment would
13 precipitate line breaks if they weren't careful, did
14 they not?

15 A. I suppose they were under, I guess I can't
16 answer what they were thinking.

17 Q. Well, you are familiar with construction, and
18 certainly what equipment can do, and you would have been
19 aware of that, would you not have?

20 A. Anybody who was on a project it was obvious
21 to how the soil was moving. Rural water was there, we
22 were there, rural water had another contractor there
23 working, everybody knew the soft conditions, they saw
24 the ground moving.

25 Q. Doesn't that telling you then you have to be

1 a little extra careful to avoid causing some damage to
2 somebody?

3 A. As to how extra careful you have to be, I
4 can't answer that. They had their machines, the ground
5 was softer, their machines could not get out of first
6 gear, speed was not a problem. They were hauling all
7 they could get in to the bowl, it was so wet the bowl
8 was filling up, they were hauling light loads, I don't
9 know what else they could have done.

10 Q. You are saying again that there was no way to
11 avoid striking the line?

12 A. Striking them, yes. There is a way of
13 probably avoiding it. Having the break because of the
14 soil pushing is a different story, they have no control
15 over that.

16 Q. How about them working with Minnehaha Water
17 to the extent that they got the lines moved before they
18 got in there and graded that?

19 A. I think the contractor did an excellent job
20 of working with Minnehaha County moving in and cutting
21 the cuts out so they didn't have to excavate 20 to 25
22 feet deep to relocate their lines.

23 Q. They had to repair at least nine breaks?

24 A. Those things are going to happen. If the
25 line had been moved prior to them coming in, it wouldn't

1 have happened, but he had no place to go because he
2 couldn't get an easement, he had to stay on private
3 property. We were both aware of this, Mr. Buss and I
4 had conversations like that, when we get by Manifold's
5 we are going to have to work together, because we don't
6 have any easement with him. I visited with the
7 contractor about that to see what we could do together.
8 We worked with East River Electric on their overhead
9 lines. We worked with Northern States Power, all
10 through Manifold's property.

11 Q. I thought you had an easement from Manifold?

12 A. We had an easement, but the utilities didn't.
13 The would sell us an easement, but he would not sell the
14 utilities an easement, still won't to this day.

15 Q. So again, you are aware that the law requires
16 notification to One-Call, or to the contractor I should
17 say, the utility, if the contractor strikes a line?

18 A. Yes.

19 Q. And you are not aware that R & G made any
20 notification to Minnehaha Water after this break early
21 morning July 29th?

22 A. I am not personally aware they called, no,
23 sir.

24 Q. That's all.

25 MR. HOSECK: Questions by the Board?

1 MR. GILLIGAN: On a project such as this,
2 and with your experience, you have obviously run several
3 of them, is safety of the utilities a primary concern?

4 THE WITNESS: Yes, it is.

5 MR. GILLIGAN: How do you make allowance
6 for that type of safety under different types of
7 conditions?

8 THE WITNESS: Well, we instruct, first of
9 all we like to have our utilities relocated outside the
10 work zone whenever possible. If that is not possible,
11 we instruct our contractors that they have to be aware
12 that the utilities are there and make every effort to
13 protect them. There is going to be incidents where they
14 get hit, there always have, always will be, but we
15 really impress safety. Not only the disruption of
16 service to our residents, but the possibilities of
17 getting someone injured, or worse yet, killed on a
18 project.

19 MR. GILLIGAN: You indicated that you had
20 a conversation with R & G's superintendent about that
21 safety, did things change after that?

22 THE WITNESS: Yes, it did.

23 MR. GILLIGAN: When was that
24 conversation?

25 THE WITNESS: As I said, I couldn't even

1 recall the exact date, but after this particular date we
2 are talking about here, one of their dozer operators was
3 crawling down a corn field, late in the evening,
4 probably 7:00, 7:15, Sioux Valley Southwestern had a
5 utility junction box right on the edge of the corn field
6 in a weed patch, the guy just, I mean the odds of
7 hitting that thing was unreal, but he just swerved off
8 and ran over the top of it, he didn't see it.

9 MR. GILLIGAN: Was that utility located,
10 marked?

11 THE WITNESS: No, it hadn't been. It was
12 negligent on the contractor's behalf. That's when we
13 had the conversation about hitting the utilities.

14 MR. GILLIGAN: Was the power line marked?

15 THE WITNESS: No, he hit the transformer
16 box itself.

17 MR. GILLIGAN: There were power lines
18 going to it?

19 THE WITNESS: They were buried.

20 MR. GILLIGAN: Were they marked?

21 THE WITNESS: I don't believe so, not in
22 that area. If it is a mile and a half north of where
23 this here operation was.

24 MR. HOSECK: Further questions by the
25 Board?

1 MR. KRUEGER: I am trying to understand
2 this pumping issue with the water line. I believe I
3 heard somebody say they were only two feet deep. Why
4 was the water line only two feet deep that they were
5 working adjacent to?

6 THE WITNESS: I don't have any idea why
7 it was only two feet deep. I always thought the water
8 lines were six foot deep.

9 MR. KRUEGER: At six foot deep they
10 wouldn't be pumping that line six foot deep in that
11 condition, would they?

12 THE WITNESS: It is pretty hard to say,
13 Mr. Krueger, that soil was so wet. If it didn't bridge
14 six foot, maybe it would have bridged across it.

15 MR. KRUEGER: Did the new line get buried
16 in the same location as the old line?

17 THE WITNESS: No, sir.

18 MR. KRUEGER: It was relocated?

19 THE WITNESS: To the west side off the
20 shoulder of the road.

21 MR. KRUEGER: And so the contractor, if I
22 am understanding it correctly, was trying to work
23 adjacent to the existing line while they buried the new
24 line off the shoulder?

25 THE WITNESS: That's right. The two

1 operations going on, they were burying the new line off
2 the shoulder, the old line was on the east shoulder, and
3 the contractor was trying to run between the two
4 operations.

5 MR. KRUEGER: Looking at that I think one
6 of the first Exhibits we had that showed the cuts and
7 fills on the job, it looked like there is a pretty
8 substantial aspect of going off into the shoulder of the
9 road in places, so is this the kind of place where they
10 were having problems where they were having problems
11 having to work adjacent to the existing line while still
12 getting it cut so the water company could relocate their
13 new lines?

14 THE WITNESS: Yes.

15 MR. KRUEGER: It was because they were
16 being forced to work adjacent to the existing line that
17 the pumping problem became a problem?

18 THE WITNESS: Yes, sir.

19 MR. SOLSETH: If this had been done other
20 than this last summer which was an extremely wet, like a
21 normal year, would this have been a problem? I mean
22 given the contractor started where he did in a normal
23 year, would there have been the problem with this water
24 line? Is it just mainly due because of the wetness of
25 the soil and the pumping action of the pipe?

1 THE WITNESS: I think in this particular
2 area according to the landowners that live out there
3 this area has always been wet. It is real springy in
4 those side hills, and two of the different landowners
5 indicated to me we are going to have a real difficult
6 time in this area with moisture, and they were
7 absolutely right.

8 MR. SOLSETH: So it wasn't really due to
9 the fact that it was July, 1999?

10 THE WITNESS: We didn't have any rain
11 after July 4th of 1999.

12 MR. SOLSETH: So let's say that R & G
13 would have started this project somewhere else, and they
14 would have ended up in this area in October, they
15 probably could have encountered the same soil
16 conditions?

17 THE WITNESS: Absolutely would have.

18 MR. SOLSETH: Because of the springs and
19 the type of soils?

20 THE WITNESS: They would have.

21 MR. SOLSETH: This issue had to be, this
22 stretch had to be done some time, and whether it was
23 done in July or whether done at the end of the project
24 really probably wouldn't have impacted the heaving of
25 the soils, of the water pipes and stuff?

1 THE WITNESS: Not in this particular
2 area, no.

3 MR. SOLSETH: In your opinion?

4 THE WITNESS: My opinion.

5 MR. HOSECK: Further questions by Board
6 members? There being none, do any of these questions
7 pose any redirect.

8 MR. SCHMIDT: None, Your Honor.

9 THE COURT: Any recross.

10 MR. LAMMERS: Just one if I may.

11 RECROSS EXAMINATION BY MR. LAMMERS:

12 Q. Mr. Meister, you mentioned the line at one
13 point was only two feet below the surface, but was that
14 after R & G had graded off probably six to eight feet?

15 A. I don't believe so, no. In one location
16 their line was buried in the shoulder of the existing
17 roadway. There was only a couple foot deep as told to
18 us by their own people.

19 MR. LAMMERS: That's all.

20 MR. HOSECK: This witness may be excused,
21 and you may call your next witness.

22 MR. SCHMIDT: Doug Weber, please.

23

24

25 called as a witness, being first duly sworn, testified

1 and said as follows:

2

3 DIRECT EXAMINATION BY MR. SCHMIDT:

4 Q. State your full name, please?

5 A. Doug Weber.

6 Q. Doug, your present address?

7 A. 113 Sommerville, Morgan, Minnesota.

8 Q. Your current job title?

9 A. Grading foreman for R & G Construction.

10 Q. How long have you held that position?

11 A. Been a grading foreman for them for four and
12 a half years.

13 Q. What does a grading foreman do?

14 A. Takes care of all the iron on the job, the
15 people, equipment.

16 Q. You generally are responsible for the work
17 getting done according to the plans?

18 A. Yes.

19 Q. And in a timely and efficient manner?

20 A. Yes.

21 Q. What was your job on this six mile road?

22 A. To re-grade the six mile road.

23 Q. You were the foreman?

24 A. Yes.

25 Q. Were you the foreman at all times?

1 A. Yes, I was.

2 Q. Were you on the project generally speaking at
3 all times?

4 A. 100 percent of the time as the whole while
5 our company was there.

6 Q. Doug, let's cut to the quick here. We are
7 talking about three incidents I guess on July 27, 1999,
8 and we have all heard where it happened and how it
9 happened and so on. What is your personal knowledge of
10 these cuts in that specific area to the water line?

11 A. The morning that my disc hit the water line,
12 it was early in the morning, we had just started, and in
13 the morning I am talking to everybody, all my operators,
14 my grade men, Bob Meister was on the job every day, and
15 I spent fifteen to twenty minutes with him every day
16 giving him my daily plan as to what I was going to do
17 every day. And that morning when that happened I had
18 talked to Bob, all my operators, and I was away from
19 the, the exact location for I don't know, half hour or
20 whatever, and by the time I got back it had already
21 happened, Dan was on the job already. So I felt that I
22 didn't have to call anybody, that Dan was already there
23 taking care of it. Dan was always on the job by 7:20,
24 7:30, if not earlier if needed.

25 Q. So did you intend to conceal that cut from

1 anybody?

2 A. No.

3 Q. What about the rest of the day, there is talk
4 about a couple other, I guess due to the pumping and the
5 tractors and the subsurface?

6 A. After the disc had hit the water main Dan and
7 I had talked about it, what are we going to do with this
8 water main in the shoulder. I said I have no way to
9 haul my dirt through the ditches because it was too wet.
10 I said what can I do? I said the only other way is to
11 stay on the one side of the road. So that is what I
12 did. I stayed on the one side of the road with the
13 scraper. Man, we must have hauled there four to five
14 days doing that same thing. My scrapers were not able
15 to meet through that area, we only used the one side of
16 the road causing it to pump the water main up, and it
17 was beyond my power that this happened.

18 Q. You have any choice to do the work other than
19 how you were doing it?

20 A. You keep going on the job, no, I had no other
21 choice, I had no other where to go because the dirt had
22 to go south from the north end of that mile.

23 Q. Doug, you heard the testimony here that after
24 the first cut where you saw Dan out there, they were
25 already fixing that one, were you aware of anything else

1 that day?

2 A. I am sure I am the one who told them we had
3 this other problem up further, because I had seen pipe
4 up there, because the blade man was blading through, and
5 it was pumped up and he caught it while they were fixing
6 it. So I wanted them to make sure that that was fixed
7 before they turned the water back on so we didn't have
8 another mess.

9 Q. And they went down and did that work,
10 correct?

11 A. Yes, they did.

12 Q. Did you intend to ever at any time to cover
13 up or conceal any hits to any pipes?

14 A. No. The only tracks that were around these
15 breaks was from us, after it would break that the
16 operators would go there with the dozer and cut a V
17 ditch down toward the ditch so the water would run off
18 the road until they got it shut off so that the water
19 would get off the road.

20 Q. In the letter of complaint that the water
21 service filed with this Board there is some mention of
22 an incident with Dan and you and on a dozer I believe,
23 and tell the panel about that, what happened?

24 A. I was running the dozer one morning.

25 Q. You recall the date of this at all?

1 A. No, I do not.

2 Q. Was it before or after the day we are talking
3 about?

4 A. It had to have been after that date.

5 Q. After July 29?

6 A. Yes.

7 Q. Tell us what happened?

8 A. They had a contractor that was doing their
9 new location of their pipe, and their contractor I felt
10 was doing very poor workmanship, they were not cleaning
11 anything up, they were not making their ditches to run,
12 everything was sitting with water, there were constant
13 springs, I couldn't hardly move, and out of frustration
14 I vented my anger to Dan, and that is as far as it went.

15 Q. Did you at that time say you were going to
16 intentionally cut any of their lines or anything?

17 A. No.

18 Q. As a result of that conversation did their
19 subcontractor -- strike that.

20 First of all, why were you concerned, or
21 why were you so upset about the work being done by the
22 subcontractor for the water company?

23 A. In order for them to put in their new line,
24 we had, we were in agreement that we would cut the ditch
25 bottom so they could put their new lines through the new

1 ditch bottom. Before they started the ditches were
2 cleaned up, they were draining so that they could go in
3 and do their work. When they left there it was just a
4 total disaster.

5 Q. Why?

6 A. Because they didn't clean it up when they
7 were done.

8 Q. Who would have to clean up the work then,
9 they left it the way they left it, who had to do that
10 work?

11 A. I did.

12 Q. Did that cost R & G money?

13 A. Yes.

14 Q. Were you ever compensated for that?

15 A. No.

16 Q. And that is why you were angry?

17 A. Yes, because I had already had it done once.
18 I figure if they go in and make and disturb it, they
19 should have to clean it up. And after that incident
20 everything was taken care of, after that morning that I
21 vented to Dan. Dan and I always did get along good on
22 the job. I had no problems with Dan through the whole
23 job.

24 Q. You were frustrated about that particular
25 incident?

1 A. Yes, I was.

2 Q. Did R & G Construction on this job at any
3 time ever intentionally cut any of the lines or conceal
4 any of the cuts?

5 A. No.

6 Q. And Dan was there every day?

7 A. Yes, he was.

8 Q. And saw if there were cuts, in fact I believe
9 there is testimony that he would actually, they were
10 there, they would see them, they would go and fix them,
11 right?

12 A. Yes.

13 Q. So they knew of all the cuts?

14 A. Yes, they did.

15 Q. Shortly after they occurred?

16 A. Yes.

17 Q. And they repaired them?

18 A. Yes, they did.

19 Q. No further questions.

20 MR. HOSECK: Cross examination.

21 CROSS EXAMINATION BY MR. LAMMERS:

22 Q. Mr. Weber, is it fair to say that had
23 Minnehaha Water been given sufficient time to move their
24 line none of this would have ever happened?

25 A. Would you repeat that again?

1 Q. Is it fair to say that if Minnehaha Water had
2 had an opportunity to relocate their line in this area,
3 that none of these occurrences would have ever happened?

4 MR. SCHMIDT: I object as speculative,
5 irrelevant.

6 MR. HOSECK: You want to direct the
7 objection.

8 MR. LAMMERS: It is cross examination,
9 counsel had asked before about whether or not they had
10 trouble working around the lines and so forth, Your
11 Honor, I am just trying to establish that if they had in
12 fact had the opportunity to relocate their lines that
13 you wouldn't have had the problems that we had.

14 MR. SCHMIDT: I didn't ask that line of
15 questioning, and secondly it is speculative. They
16 didn't relocate their line, although they were given
17 notice, they had the opportunity to do so.

18 MR. HOSECK: I am going to sustain the
19 objection.

20 Q. Tell me about the sequence of the cuts on
21 July 29, how did they happen, when did they happen?

22 A. The first one happened early in the morning
23 as you already know with the disc. Then the other ones
24 were, one of them, the one I told him about was shortly
25 after that I would assume, because I had seen it, the

1 pipe up on top of the ground. As far as the third one,
2 it was, you know, throughout the day some time after
3 they had got everything fixed again, throughout the day
4 with the scrapers running on the one side of the road,
5 you know, pumped it up again.

6 Q. My understanding that all three of these
7 happened prior to their arriving at the job that day?

8 A. I guess I am not aware of that. No, I don't
9 know that, that all three of them did.

10 Q. Well, okay. But in any event --

11 A. I guess while they were fixing the first one
12 that these other two could have happened then, you know,
13 right after the first break.

14 Q. Different piece of equipment, same piece of
15 equipment?

16 A. Could have been any one of all the equipment
17 going by, the scrapers.

18 Q. In any case --

19 A. That same day also they had Winter Brothers
20 there doing their work, and in that area they were
21 hauling their pipe with their loader, a forklift loader.
22 They are hauling their pipe with their forklift loader
23 through the area. My scrapers were on the west side of
24 the road going north and south, and here comes Winter
25 Brothers' loader right through the mud, stuck. I had to

1 pull them out with another piece of my equipment, and I
2 am not, and who is to say that they didn't pump it up.
3 I do not know.

4 Q. Talking about the second, the third?

5 A. Second or third time, I do not know.

6 Q. We are talking about the first one?

7 A. But they were right there fixing it while
8 this loader came in there and drove right in the mud.

9 Q. In any case, R & G did not notify Minnehaha
10 Water or anybody else about this line break?

11 A. I did not call in to Minnehaha Water because
12 by the time I knew about it Dan was there and I had
13 talked to Dan about it.

14 Q. You say you were gone about a half an hour?

15 A. Every morning I am trying to get everything
16 lined up so that I am, I got my ducks all in a row and
17 things can keep going.

18 Q. But none of your other men or operators
19 called that in?

20 A. They don't have a phone. My operators do
21 not.

22 Q. Well?

23 A. And I had my grade man with me.

24 Q. Could they stop the equipment and get off and
25 get to a phone?

1 A. There is not a phone on the job other than in
2 my pickup.

3 Q. How far away is your pickup?

4 A. I had my pickup.

5 Q. You were gone off the site?

6 A. Not off you the site, I was on a different
7 spot on the site.

8 Q. Did you ever talk to any one of your
9 operators who would have been running this disc about
10 what had happened?

11 A. Yeah, I told them to stay off of it after he,
12 you know, found it and cut it. We stayed off it, we
13 were on the one side of the road.

14 Q. You were present on August 3 when Mr. Buss
15 and yourself and Mr. Mathiowetz, and I think Mr. Meister
16 were all having this conversation about John's concern
17 of all these breaks happening, do you recall that
18 meeting?

19 A. I did not talk to John that day. Everything
20 that I had dealings with was with Dan, Bob and my boss
21 Greg.

22 Q. You were not present at that particular
23 meeting?

24 A. I was in the area, but I was not involved in
25 the conversation.

1 Q. I want to sequence if I can, though, when
2 you, as you say, vented your anger with Dan Buseth,
3 would that have been prior to that meeting?

4 A. Yeah, I think it was before that meeting. I
5 do not know how much before, how many days, what day it
6 was, but I don't recall that.

7 Q. So tell me what you told Dan?

8 A. I was frustrated, and I just, I didn't feel
9 it was fair that I had to clean up their mess.

10 Q. You swear at him?

11 A. I didn't swear at him, I swore about the
12 situation.

13 Q. Did you intend to intimidate him?

14 A. No, I wasn't intimidating Dan. I didn't mean
15 it that way. It could have went that way, but I didn't
16 mean it that way.

17 Q. Did you also threaten to cut their lines?

18 A. No, I did not threaten to cut their lines.

19 Q. Absolutely did not?

20 A. No.

21 Q. That's all, thank you.

22 MR. HOSECK: Questions by the Board?

23 MR. SCHMIDT: No further questions.

24 MR. HOSECK: This witness may be excused.

25 You may call your next witness.

1 MR. SCHMIDT: We rest.

2 MR. HOSECK: Does Minnehaha County Water
3 Corporation have any rebuttal witnesses?

4 MR. LAMMERS: Yes, Your Honor. We call
5 Dan Buseth.

6
7 DAN BUSETH,
8 called as a witness, being previously duly sworn,
9 testified and said as follows:

10

11 DIRECT EXAMINATION BY MR. LAMMERS:

12 Q. Dan, a couple of questions that came up in
13 testimony here prior to now that I would like to inquire
14 about. The first being the depth of your lines at this
15 particular location, it has been testified as being two
16 feet. What is your knowledge of that fact?

17 A. In the areas where we were hit there was cuts
18 of course going on, we were on the edge of the road and
19 the shoulder of the road, so the ditch cut probably
20 moved over a little bit, there was soil taken off. When
21 we were there, or after they were hit there is a road
22 bed was gone, it was just the silty clay like they said
23 it was, and the main thing two feet deep would be in the
24 road, so there had been soil taken off, but they were in
25 the cut area.

1 Q. How deep would your lines have originally
2 been in that area, if you know?

3 A. It could be, you know, five to six feet deep
4 when it was installed.

5 Q. So R & G had previously graded over those
6 lines?

7 A. The road, the gravel was taken off, the soil
8 was taken off, and it was in a cut area, I would assume
9 there was some cut taken off.

10 Q. That was in an area where your lines were
11 marked, of course?

12 A. They were marked, flags, at one time.

13 Q. On this occasion that Mr. Weber said he had
14 confronted you and as he said vented his anger, what do
15 you recall about that, do you recall when the particular
16 occasion would have been?

17 A. I would like to say Doug and I got along real
18 well. Weather was a problem, soil was problem, we
19 worked things out, we got along, after all these
20 incidents further down the way we worked out real good.
21 On this occasion was the first time I met Doug, it had
22 rained Saturday, Sunday, Monday, I can't remember what
23 day it rained, and I could probably find the date. I
24 believe it was one of the first days I was there, it was
25 raining, we did have, it was the first incident, and his

1 machinery wasn't working, we were doing a road bore, and
2 we struck up a conversation, things kind of got, went
3 from bad to worse, and out of frustration Doug did say
4 to me that some, he was pretty displeased with the
5 utilities being in his way, and he did say that some
6 Friday night at five o'clock he would hit our line. I
7 am saying this is out of frustration, because it was
8 getting kind of hot and heated, and --

9 Q. Would this have been prior to any of the
10 breaks occurring, or after some had occurred?

11 A. It was the first days, it was the days it was
12 raining, and you would have to look it up, but it was
13 when we first started the project, Winter Brothers first
14 started on the north side of Highway 26, it was my first
15 time I had met Doug.

16 Q. Did you also have an occasion to visit with
17 one of their operators after that time concerning what
18 side of the road they were grading on?

19 A. That is where a lot of people assuming
20 things. I visited with Doug, he was going down the east
21 side of the road on top of our pipe, pumping soil, soil
22 was really tough, and we visited, getting along good, he
23 and I were getting along good. He moved his equipment
24 over to the west side to stay off our lines, to
25 completely stay away to eliminate pumping. I came back

1 an hour later, hour and a half, and the equipment was on
2 our side on the east side of the road on not necessarily
3 on top of it, but cutting on both sides of our pipe to
4 get as much soil as they could. And I happened to stop
5 and talk to their grade checker who was standing there,
6 and asked them kind of what the heck is going on here,
7 you know, because Doug told him to move all the
8 equipment to the west side, which he did for an hour and
9 a half. And the grade checker said that Doug had told
10 him to move back on the east side and get some dirt, get
11 as much dirt, not to get our pipe, but to get dirt. The
12 grade checker, and I talked to the grade checker, and he
13 I believe talked to Doug or the operators and they did
14 move back off again.

15 Q. That's all I have, thank you.

16 MR. HOSECK: Cross examination.

17 CROSS EXAMINATION BY MR. SCHMIDT:

18 Q. You do recall the problem your subcontractor
19 not finishing, what Doug said was correct, right?

20 A. That was correct, it was. If I can go on, it
21 was rainy, it was sloppy, springs in the ground, our
22 contractor was putting it in a little on the hurry up
23 and get it done, and the soil was wet, it rained, they
24 were cleaning up as good as they thought they could, and
25 it was mucky, with the intentions, I am assuming with

1 intentions to come back and clean it up better when it
2 dried. And then Doug and I had a little conversation,
3 and we, and I did admit to Doug that we will get those
4 guys back in there and get a good operator and clean it
5 up. And Doug took it upon himself to clean it up, and I
6 will admit he did clean up the mess they had left in
7 that 300 feet or 400 feet there on the west side. That
8 was a problem.

9 Q. What he testified to about your own water
10 supply company's subcontractor hauling the pipe in with
11 heavy equipment, that happened too, right?

12 A. They were not our contractor.

13 Q. Your subcontractor?

14 A. Yes, I was hoping Doug would forget that.
15 But yes, the leaks before that had happened, that
16 happened in the morning and we had fixed them, it was
17 flagged, but that was true.

18 Q. That would have contributed to the pumping
19 and raising up the pipe too?

20 A. Yes, that was the end of the leaks, those
21 three, we finished fixing all our leaks, it was done and
22 then they came in.

23 Q. Thank you, no further questions.

24 MR. HOSECK: This prompt any questions by
25 the Board members?

1 MR. KRUEGER: I am trying to determine,
2 how intentional was all this stuff. Do you feel that
3 they intentionally concealed or cut your line?

4 THE WITNESS: They didn't conceal
5 anything. I guess after nine times it kind of is
6 questionable. I am a likable guy, I think give
7 everybody the benefit of the doubt. I can't say they
8 intentionally came in and did it. I think they could
9 have been more cautious, could have probably done
10 something a little bit different. They realized after
11 we had, they are there for one day, that our line was
12 there, there were flags, and their operator should have
13 known, you know, to stay away. The guy with the disc
14 just driving over it and hitting it is, you know, I am
15 not saying it is intentional, but maybe a little on the
16 blind side, or doesn't know the width of his disc. I
17 can't, they didn't intentionally cover up anything,
18 definitely not. But intentionally hit it, I guess maybe
19 I have thrown that word out or my employee, my crew
20 maybe talking about it, but I can't say intentionally
21 just going out and doing it. I truthfully can't say
22 that. I guess maybe if I was one-on-one with Doug I
23 would say why are you hitting us, you know, you know
24 better. But I can't say they veered over and
25 intentionally hit it.

1 MR. ANDERSON: You said you had nine
2 leaks?

3 THE WITNESS: Yes.

4 MR. ANDERSON: Of the nine leaks how many
5 of those occurred when your crew was not on the job
6 site?

7 THE WITNESS: Those three in the morning.
8 On the 28th at noon we were several hundred feet away,
9 we saw it, and those, and we fixed that. And then the
10 three that came at 5:30, six o'clock that evening, we
11 were on our way home, I received a call, and I know
12 don't know the exact location, but we had to turn
13 around, we were halfway home, ten, twelve miles away
14 from the job site at a quarter to six when I was called.

15 MR. ANDERSON: Who made that notification
16 of those three leaks?

17 THE WITNESS: That was the evening one.
18 That Doug called into the answering service, the
19 answering service called Jim who is on call, who called
20 me on my cell phone, and I turned around.

21 MR. GILLIGAN: A question, from the
22 testimony I am assuming you were installing new pipe and
23 maintaining the existing pipe in service, is that right?

24 THE WITNESS: Yes, sir.

25 MR. GILLIGAN: So it wasn't that you were

1 moving the existing pipe to the new location, it was the
2 new pipe being installed and maintain the existing?

3 THE WITNESS: Yes, the old pipe was on
4 the east side of the road, we were on the west side
5 installing new pipe at that time in the ditch, the old
6 pipe was on the shoulder.

7 MR. HOSECK: Any further questions by
8 Board members? Does this prompt any redirect?

9 MR. LAMMERS: No.

10 RECROSS EXAMINATION BY MR. SCHMIDT:

11 Q. Do you recall that there were instances where
12 you or your subcontractor actually cut your own pipe?

13 A. There was instances.

14 Q. No further questions.

15 MR. HOSECK: Do you have any further
16 rebuttal witnesses.

17 REDIRECT EXAMINATION BY MR. LAMMERS:

18 Q. Explain that to me, if you will?

19 A. We were trying to maintain our old six inch
20 main while installing a new main, and the old main of
21 course crosses the highway, services go to homes, and
22 the contractor digging like crossing the power,
23 electric, crossing our water lines, and there was a case
24 where our private contractor did hit our line. As Greg
25 said, that sometimes happens.

1 Q. That's all, thank you.

2 MR. SCHMIDT: That's all.

3 MR. HOSECK: This witness may be excused.

4 MR. LAMMERS: One other witness if I may,
5 call John Buss.

6

7

JOHN BUSS,

8 called as a witness, being previously duly sworn,
9 testified and said as follows:

10

11 DIRECT EXAMINATION BY MR. LAMMERS:

12

Q. John, what was your intention in this area
13 with reference to your pipe, were you relocating pipe,
14 or were you, explain to the Board what you had to do?

15

A. We had to get it out of harm's way, some we
16 were relocating. In this particular area in the south
17 end of the project we were going to relocate it to the
18 other side of the road.

19

Q. Mr. Meister has testified that you received
20 certain notices and what not about proceeding along the
21 way. Would you explain how that came about, and what
22 you did in reaction to that, or didn't do in reaction to
23 that?

24

A. We had a notice, like he said, from his
25 assistant back, it had to be some time in probably I am

1 guessing '97, late '97 or maybe early '98 that they were
2 intending to grade the road and it was going to be let
3 in the spring of '98. Subsequent to that we talked
4 several times to him and I was informed they were
5 having, early on in '98 they had a problem with funding,
6 they were waiting for some funding. I don't remember if
7 it was Pierre or in Washington, and they weren't going
8 to have the money to do the project unless that fund was
9 approved. It was highway dollars and I don't remember
10 what the source was, one government or the other. Then
11 I talked to him a little later in the season and it
12 sounded like it was going to get too late to do it.
13 Then the spring Jim Auen, my operations manager and I
14 were out looking at some projects in the spring, and I
15 don't recall exactly what time it was, but I know the
16 weather was nice, and we were out digging, and this type
17 of stuff, and we stopped in and talked to Bob and asked
18 him how the project was coming. And he said, well, we
19 are having problems with the easements. And I asked him
20 is it in the middle of the project? And he said no,
21 it's on the south end of the project. So he told me at
22 that time I don't care if the project gets done or not,
23 it's their project, and if people want to get it done
24 they have to start signing easements and giving us
25 right-of-way, and he says I am going to have a come to

1 Jesus meeting with them, and if this doesn't happen the
2 project is not going to get built.

3 Q. And you received your first official
4 notification to relocate your line when?

5 A. The first notification that we had that the
6 project was going to go was when we got a phone call
7 saying there was going to be a preconstruction
8 conference.

9 Q. And approximately when was that?

10 A. That would have been, I don't know, several
11 days preceding the July 7th preconstruction conference.
12 Probably late in June or first week in July,
13 thereabouts.

14 Q. What did you have to do in reaction to that
15 to begin to relocate your line?

16 A. Well, it was a big project, had to move a lot
17 of dirt, and obviously we weren't capable of handling it
18 ourselves. So we tried to find some contractors to help
19 us out to expedite the process, and of course we had to
20 order pipe, there was I guess a hundred thousand dollars
21 worth of materials on the project, and I wasn't going to
22 move more line or buy pipe until we knew the project was
23 a go. Unfortunately the timeframe was so short that we
24 didn't have time to do it. We lucked out, we found
25 Winter Brothers, they were looking for some work, or

1 they pulled some crews off the other projects and they
2 come in and helped us, and at times we had like four
3 different machines out there digging and relocating
4 pipe, making road bores, moving services, relocating
5 mains and this type of stuff.

6 Q. That's all I have, thanks.

7 MR. SCHMIDT: No questions.

8 MR. HOSECK: Questions by the Board?
9 This witness may be excused. Do you have any further
10 rebuttal witnesses.

11 MR. LAMMERS: No.

12 MR. HOSECK: Do either of the parties
13 wish to make a closing statement.

14 MR. LAMMERS: I don't need to make one.

15 MR. SCHMIDT: I don't in particular.

16 Again for the record I renew my motion to dismiss.
17 There is no evidence of the statutory elements that the
18 time factor the contractor did anything wrong as
19 admitted by the water company's own witnesses, no
20 knowing intentional act, and we would move that it be
21 dismissed for lack of evidence.

22 MR. HOSECK: I am going to deny the
23 motion at this point in time, and recommend that the
24 Board take the matter under advisement. What is the
25 desire of the Board at this time in terms of making a

1 decision, you want to proceed with making one yet today,
2 do you desire any further legal advice on this matter,
3 what do you wish to do?

4 MR. CHAMBERS: Motion and second to go in
5 to executive session for discussion. Motion carried.

6 MR. HOSECK: What I would ask the parties
7 to do is to kind of hang around and then we will
8 reconvene and hopefully have a decision, and so we would
9 ask the same with the Court Reporter also.

10

11 (Whereupon, a short recess was taken.)

12

13 MR. HOSECK: I would ask that we go back
14 on the record, and there should be an action taken at
15 this time that we go out of the executive session.

16 MR. CHAMBERS: Moved and seconded and
17 passed.

18 MR. HOSECK: Counsel, we are going to
19 handle this perhaps in a unique manner, because of the
20 number of issues involved. I am going to pose the
21 questions that have to be ultimately answered by the
22 commission, or the Board in their vote, and then they
23 will take the action, but there will be a series of
24 questions that will be asked. This is going to be
25 similar to a special verdict form if we were on the

1 civil side trying a civil matter. The first question
2 for the Board to answer is was there damage, dislocation
3 or disturbing of an underground facility in advance of
4 or during excavation work. At this time it would be
5 appropriate for you to have the decision of the Board on
6 that issue.

7 MR. CHAMBERS: There is a motion and
8 second that damage was caused. Motion by Pat Gilligan
9 and second by Jim Lewis, discussion on the motion. I
10 will poll the Board individually. Are you in favor of
11 the motion, Harold Anderson.

12 MR. ANDERSON: Yes.

13 MR. CHAMBERS: Mr. Bierschbach.

14 MR. BIERSCHBACH: Yes.

15 MR. CHAMBERS: Mr. Gilligan?

16 MR. GILLIGAN: Yes.

17 MR. CHAMBERS: Mr. Krueger?

18 MR. KRUEGER: Yes.

19 MR. CHAMBERS: Mr. Lewis?

20 MR. LEWIS: Yes.

21 MR. CHAMBERS: Mr. Pohl?

22 MR. POHL: Yes.

23 MR. CHAMBERS: Mr. Solseth?

24 MR. SOLSETH: Yes.

25 MR. CHAMBERS: Mr. Chambers yes.

1 MR. HOSECK: In light of this finding,
2 how many times was an underground facility damaged,
3 dislocated or disturbed in advance of or during
4 excavation work.

5 MR. CHAMBERS: A motion and second,
6 second by Krueger that there is a disturbance of three
7 times. Mr. Anderson.

8 MR. ANDERSON: There was the three.

9 MR. CHAMBERS: Bierschbach?

10 MR. BIERSCHBACH: Yes.

11 MR. CHAMBERS: Gilligan?

12 MR. GILLIGAN: No.

13 MR. CHAMBERS: Mr. Krueger?

14 MR. KRUEGER: Yes.

15 MR. CHAMBERS: Mr. Lewis?

16 MR. LEWIS: Yes.

17 MR. CHAMBERS: Mr. Pohl?

18 MR. POHL: No.

19 MR. CHAMBERS: Mr. Solseth?

20 MR. SOLSETH: Yes.

21 MR. CHAMBERS: Chambers, no.

22 There was a majority on that motion, it
23 carried.

24 MR. HOSECK: Did the excavator fail to
25 immediately notify the operator of any of the items of

1 damages that have previously been voted on?

2 MR. CHAMBERS: Ask for a motion relative
3 to the question.

4 MR. KRUEGER: Want me to move yes or no.
5 I move that no, there was not an intentional --

6 MR. HOSECK: The question is whether or
7 not the excavator failed to immediately notify the
8 operator of any of the incidents which you have
9 previously voted on.

10 MR. KRUEGER: My motion is I move we say
11 no -- excuse me. That he notified, immediately
12 notified.

13 MR. BIERSCHBACH: Would move no.

14 MR. KRUEGER: That he failed to
15 immediately notify, no is my motion.

16 MR. HOSECK: I think we may need some
17 clarification on that. Is your motion, would you
18 clarify your motion.

19 MR. KRUEGER: Well, basically that's my
20 vote, too. I am saying I don't believe in this case
21 that they failed to notify immediately.

22 MR. SOLSETH: What is it now for sure?

23 MR. SCHMIDT: Point of order,
24 clarification, is that appropriate?

25 MR. HOSECK: The question is, if I am

1 understanding it now, is whether or not the excavator
2 failed to immediately notify the operator, and the
3 motion is that he did not fail to immediately notify the
4 operator.

5 MR. SCHMIDT: Clarification, being that
6 there was adequate notice?

7 MR. KRUEGER: Yes.

8 MR. HOSECK: Does everybody understand
9 the motion?

10 MR. GILLIGAN: Clarify the vote, a yes or
11 no vote will address to that point.

12 MR. CHAMBERS: I don't believe it's been
13 seconded yet. Is there a second on the motion. Second
14 by Pohl. Discussion on the motion?

15 MR. GILLIGAN: Ask for a clarification of
16 the vote, what a yes vote is in favor of and what a no
17 vote will do. A yes vote will say that the excavator
18 did not notify, or did notify.

19 MR. KRUEGER: My motion was that, the
20 motion is no, that we as a group move no that he did not
21 fail to notify. So to me a yes vote would say yes, he
22 did not fail to notify. A no vote would mean that he
23 did fail to notify.

24 MR. SCHMIDT: A point of order. Maybe
25 the motion should be, as I understand the intent of the

1 motion, the intent of the motion is that under the
2 circumstances there was adequate notice.

3 MR. HOSECK: The question is whether or
4 not the excavator failed to immediately notify the
5 operator of those items that the Board has already
6 found, and so the motion was, and correct me if I am
7 wrong, that the motion is that the excavator did not
8 fail to immediately notify the operator. So a vote in
9 the affirmative would mean that the excavator did not
10 fail to immediately notify. Do we understand this?

11 MR. BIERSCHBACH: So a yes vote would
12 support the rural water system, a no vote would support
13 the contractor.

14 MR. KRUEGER: The other way around.

15 MR. HOSECK: Is the Board comfortable
16 with understanding the issue for purposes of voting?

17 MR. BIERSCHBACH: I would like to hear
18 the question one more time then, I am sorry.

19 MR. HOSECK: Did the excavator fail to
20 immediately notify the operator of any of the items of
21 damage that you have previously voted on.

22 MR. POHL: Can we make a different motion
23 to clarify this? Can I make a motion that we use that
24 question, that we vote on that question, did the
25 operator fail to notify.

1 MR. CHAMBERS: You want a substitute
2 motion?

3 MR. POHL: I make a motion to accept the
4 question as did the operator fail to notify, immediately
5 notify. Did the contractor fail to immediately notify
6 the operator of damage, and that's the question we vote
7 on.

8 MR. KRUEGER: To make sure everyone is
9 clear, a no vote would be saying that no, he didn't
10 fail, a yes vote, yes he did fail?

11 MR. CHAMBERS: Mr. Lewis seconded the
12 motion. Does everyone understand the motion? Any
13 further discussion.

14 MR. GILLIGAN: Clarification, restate.

15 MR. HOSECK: Could we restate the motion,
16

17 (Whereupon, the requested portion of the
18 Record was read by the Reporter.)

19

20 MR. HOSECK: That is not exactly the way
21 the question was posed, it was a little bit closer to
22 did the excavator fail to immediately notify the
23 operator of any of those items.

24 MR. KRUEGER: That is the question.

25 MR. CHAMBERS: Is there an amendment to

1 the motion to be exactly like the question?

2 MR. KRUEGER: Isn't that what his motion
3 was then?

4 MR. POHL: I will try this one more time.
5 I make a motion we vote on the question did the
6 contractor fail to immediately notify the operator of
7 damage.

8 MR. CHAMBERS: Is there a second on the
9 motion.

10 MR. KRUEGER: Second.

11 MR. CHAMBERS: Any further discussion on
12 the question? On the motion, excuse me? Everyone
13 understands what a yes and no vote would do. I would
14 Pohl the Board. Mr. Anderson?

15 MR. ANDERSON: No.

16 MR. CHAMBERS: Mr. Bierschbach?

17 MR. BIERSCHBACH: No.

18 MR. CHAMBERS: Gilligan?

19 MR. GILLIGAN: Yes.

20 MR. CHAMBERS: Mr. Krueger?

21 MR. KRUEGER: No.

22 MR. CHAMBERS: Lewis?

23 MR. LEWIS: Yes.

24 MR. CHAMBERS: Mr. Pohl?

25 MR. POHL: No.

1 MR. CHAMBERS: Mr. Solseth?

2 MR. SOLSETH: No.

3 MR. CHAMBERS: Chambers, no.

4 MR. HOSECK: The next question that would
5 then be addressed would be did the excavator conceal or
6 attempt to conceal any damages, dislocation or
7 disturbance or attempt to make any repairs to the
8 facility as authorized by the operator.

9 MR. KRUEGER: I move that question.

10 MR. BIERSCHBACH: Second.

11 MR. CHAMBERS: Motion by Krueger and
12 second by Bierschbach. Any further discussion on the
13 motion? I will call for the question. Mr. Anderson?

14 MR. ANDERSON: No.

15 MR. CHAMBERS: Bierschbach?

16 MR. BIERSCHBACH: No.

17 MR. CHAMBERS: Gilligan?

18 MR. GILLIGAN: Yes.

19 MR. CHAMBERS: Mr. Krueger?

20 MR. KRUEGER: No.

21 MR. CHAMBERS: Mr. Lewis?

22 MR. LEWIS: No.

23 MR. CHAMBERS: Mr. Pohl?

24 MR. POHL: No.

25 MR. CHAMBERS: Solseth?

1 MR. SOLSETH: No.

2 MR. CHAMBERS: Chambers, no. Motion
3 carried.

4 MR. HOSECK: The last question would be
5 did the excavator knowingly violate SDCL 49-7A-12 which
6 is the section that has been noticed in this matter.

7 MR. CHAMBERS: Is there a motion.

8 MR. BIERSCHBACH: So move.

9 MR. ANDERSON: Second.

10 MR. CHAMBERS: Motion by Bierschbach,
11 second by Anderson, any further discussion on that
12 motion. If not, I will call for the question.
13 Mr. Anderson?

14 MR. ANDERSON: No.

15 MR. CHAMBERS: Mr. Bierschbach?

16 MR. BIERSCHBACH: No.

17 MR. CHAMBERS: Mr. Gilligan?

18 MR. GILLIGAN: Yes.

19 MR. CHAMBERS: Mr. Krueger?

20 MR. KRUEGER: No.

21 MR. CHAMBERS: Mr. Lewis?

22 MR. LEWIS: No.

23 MR. CHAMBERS: Mr. Pohl?

24 MR. POHL: No.

25 MR. CHAMBERS: Mr. Solseth?

1 MR. SOLSETH: No.

2 MR. CHAMBERS: Mr. Chambers no.

3 MR. HOSECK: I believe that concludes the
4 questions.

5 MR. CHAMBERS: The motion is carried.

6 MR. HOSECK: That answers the questions
7 posed before this body, is there anything further? If
8 not, I would recommend that we be in adjournment.

9 MR. KRUEGER: Do we have a motion maybe
10 to dismiss the thing or anything like that?

11 MR. HOSECK: There will be Findings of
12 Fact and Conclusions of Law that I am going to have to
13 draw up and they will be circulated to you as Board
14 members to sign. Those will be filed and there will be
15 notice given to the parties, and they will have the
16 right of appeal.

17 MR. SCHMIDT: I would like to thank the
18 hearing examiner and the Board for their courtesy this
19 morning.

20 MR. CHAMBERS: Is there a motion to
21 adjourn.

22 MR. BIERSCHBACH: So move.

23 MR. GILLIGAN: Second.

24 MR. CHAMBERS: Motion carried.

25

1 STATE OF SOUTH DAKOTA)

2 :SS

CERTIFICATE

3 COUNTY OF MINNEHAHA)

4

5

6

7

8

9 This is to certify that I, JERRY MAY,
10 Court Reporter in the above-named County and State, took
11 the proceedings of the forgoing One-Call Notification
12 Board, and the forgoing pages 1-130, inclusive, are a
13 true and correct transcript of my stenotype notes.

14 I FURTHER CERTIFY that I am not an
15 attorney for, nor related to the parties to this action
16 and that I am in no way interested in the outcome of
17 this action.

18 Dated at Sioux Falls, South Dakota, this
19 24th day of January, 2000.

20

21

22

23

24

25

COURT REPORTER



262+00.00 TO 264+98.46 Lt
Temporary Easement for
Cut/Fill slopes Containing
0.83 acre(s), more or less

264+98.46 TO 268+50.00 Lt
Temporary Easement for
Cut/Fill slopes Containing
1.11 acre(s), more or less

271+00.00 TO 278+13.97 Lt
Temporary Easement for
Cut/Fill slopes Containing
0.87 acre(s), more or less

278+13.97 TO 280+00.00 Lt
Temporary Easement for
Cut/Fill slopes Con
0.19 acre(s), more

267+83-22.7' Lt. to 267+85.3-22.8' Rt.
Take out 48"-46" CMP ARCH
(Incidental Work)

Sta. 271+50 to 274+25 Lt
Clear 14 Trees

276+09-24.3' Lt.
Take Out 18"-30" CMP
(Incidental Work)

278+50.1-24.0' Lt.
Take Out 18"-31" (Incidental Work)

Sta. 278+25 to 278+00 LL
Clear 18 Trees

280+10.7-26.0' Lt.
Take Out 15"-31" (Incidental Work)

280+40 - Lt.
Refurbish Double M

Sta. 279+80 LL
Clear 1 Tree

Sta. 279+90 LL
Clear 1 Tree

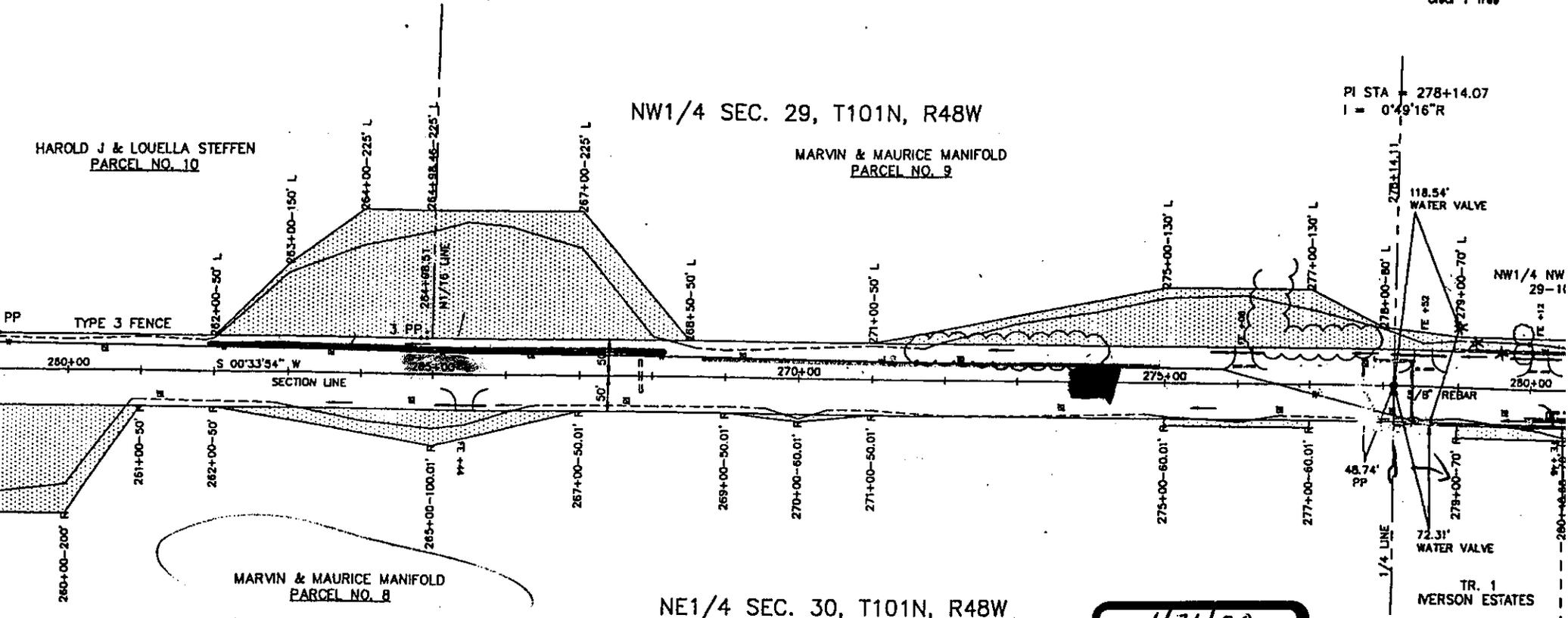
1st leak
2nd leak
3rd leak

NW1/4 SEC. 29, T101N, R48W

PI STA 278+14.07
I = 0'49"16"R

HAROLD J & LOUELLA STEFFEN
PARCEL NO. 10

MARVIN & MAURICE MANIFOLD
PARCEL NO. 9



MARVIN & MAURICE MANIFOLD
PARCEL NO. 8

NE1/4 SEC. 30, T101N, R48W

1/21/00
EXHIBIT
#1
Jerry J. May

TR. 1
IVERSON ESTATES
ROBERT & CAROLINE
IVERSON
2601 S. 6 MILE RD.
SIOUX FALLS, SD

Invoice Date 08/26/99
 Account Number 0000509521
 Mobile Number 605-366-0194
 Account Name MINNEHAHA COMMUNITY WATER CORP

For Billing
 Inquiries Call
 1-800-COMNET
 1-800-266-6638

Detail of Call Charges (605-366-0194)

Line	Date	Time	Called Place	Called Number	Feat	Dir	-----Airtime-----		Charge	-----Land-----		Total Charge
							Per	Mins		Rate	Mins	
19	7-29	7:22A	MOBILE	CL 605-366-1096		M-M	1	1	Free			0.00
20	7-29	5:43P	SIOUX FLS	SD 605-331-5545		M-L	1	1	Free			0.00
21	7-30	9:18A	GARRETSON	SD 605-594-6677		M-L	1	4	Free			0.00
22	7-30	9:22A	GARRETSON	SD 605-594-6677		M-L	1	3	Free			0.00
23	7-30	12:29P	MOBILE	CL 605-366-1096		M-M	1	4	Free			0.00
24	7-30	1:13P	MOBILE	CL 605-366-1096		M-M	1	2	Free			0.00
25	7-30	1:16P	HARTFORD	SD 605-528-6406		M-L	1	1	Free			0.00
26	7-30	2:00P	MOBILE	CL 605-366-1096		M-M	1	1	Free			0.00
27	7-30	3:59P	MOBILE	CL 605-366-1096		M-M	1	1	Free			0.00
28	7-30	4:02P	HARTFORD	SD 605-528-6406		M-L	1	1	Free			0.00
29	7-30	5:17P	BALTIC	SD 605-529-5645		M-L	1	2	Free			0.00
30	7-30	5:19P	SIOUX FLS	SD 605-940-4887		M-L	1	3	Free			0.00
31	7-31	1:43P	MOBILE	CL 605-366-0710		M-M	4	1	Free			0.00
32	7-31	1:53P	MOBILE	CL 605-366-0710		M-M	4	2	Free			0.00
33	7-31	3:02P	MOBILE	CL 605-366-0710		M-M	4	1	Free			0.00
34	7-31	5:56P	INCOMING	CL 605-366-0194		L-M	4	2	Free			0.00
35	8-02	7:43A	INCOMING	CL 605-366-0194		L-M	1	1	Free			0.00
36	8-02	8:10A	PIPESTONE	MN 507-820-2238		M-L	1	4	Free	AD	4 LD	1.12
37	8-02	8:14A	MOBILE	CL 605-366-0489		M-M	1	1	Free			0.00
38	8-02	8:19A	MOBILE	CL 605-366-0489		M-M	1	2	Free			0.00
39	8-02	8:24A	INCOMING	CL 605-366-0194		M-M	1	3	0.25			0.25
40	8-02	9:20A	SIOUX FLS	SD 605-360-5599		M-L	1	3	0.75			0.75
41	8-02	10:11A	GARRETSON	SD 605-594-3979		M-L	1	2	0.50			0.50
42	8-02	10:15A	SIOUX FLS	SD 605-940-2110		M-L	1	4	1.00			1.00
43	8-02	10:41A	SIOUX FLS	SD 605-336-1047		M-L	1	2	0.50			0.50
44	8-02	12:38P	SIOUX FLS	SD 605-575-8388		M-L	1	2	0.50			0.50
45	8-02	1:11P	PIPESTONE	MN 507-820-2238		M-L	1	1	0.25	AD	1 LD	0.28
46	-02	1:35P	SIOUX FLS	SD 605-336-1047		M-L	1	1	0.25			0.25
47	J-02	1:59P	INCOMING	CL 605-366-0194		L-M	1	3	0.75			0.75
48	8-02	2:50P	DELLRAPIDS	SD 605-428-5210		M-L	1	1	0.25			0.25
49	8-02	2:51P	INCOMING	CL 605-366-0194		L-M	1	1	0.25			0.25
50	8-02	3:03P	INCOMING	CL 605-366-0194		L-M	1	1	0.25			0.25
51	8-02	4:39P	INCOMING	CL 605-366-0194		L-M	1	3	0.75			0.75
52	8-02	5:06P	INCOMING	CL 605-366-0194		M-M	1	1	0.25			0.25
53	8-02	5:21P	INCOMING	CL 605-366-0194		L-M	1	1	0.25			0.25
54	8-02	6:28P	INCOMING	CL 605-366-0194		M-M	1	2	0.50			0.50
55	8-03	3:35P	PIPESTONE	MN 507-820-2238		M-L	1	1	0.25	AD	1 LD	0.28
56	8-03	4:32P	MOBILE	CL 605-366-0489		M-M	1	3	0.75			0.75
57	8-03	4:39P	GARRETSON	SD 605-594-6352		M-L	1	2	0.50			0.50
58	8-03	5:33P	SIOUX FLS	SD 605-360-5599		M-L	1	5	1.25			1.25
59	8-03	5:51P	SIOUX FLS	SD 605-338-0194		M-L	1	2	0.50			0.50
60	8-03	5:54P	BALTIC	SD 605-529-5621		M-L	1	1	0.25			0.25
61	8-03	6:20P	INCOMING	CL 605-366-0194		L-M	1	1	0.25			0.25
62	8-03	6:46P	SIOUX FLS	SD 605-360-5599		M-L	1	1	0.25			0.25
63	8-05	8:20A	HARTFORD	SD 605-528-3211		M-L	1	4	1.00			1.00
64	8-05	11:40A	GARRETSON	SD 605-594-6352		M-L	1	1	0.25			0.25
65	8-05	3:22P	INCOMING	CL 605-366-0194		L-M	1	4	1.00			1.00
66	8-05	4:54P	INCOMING	CL 605-366-0194		M-M	1	2	0.50			0.50
67	8-05	5:25P	GARRETSON	SD 605-594-6352		M-L	1	2	0.50			0.50
68	8-05	5:27P	DELLRAPIDS	SD 605-428-3374		M-L	1	1	0.25			0.25
69	8-06	9:37A	INCOMING	CL 605-366-0194		L-M	1	1	0.25			0.25
70	8-06	11:05A	MOBILE	CL 605-366-0629	HF	M-M	1	2	0.50			0.50
71	8-06	11:42A	MOBILE	CL 605-366-1096		M-M	1	3	0.75			0.75
72	8-06	11:48A	INCOMING	CL 605-366-0194	HF	M-M	1	5	1.25			1.25
73	8-06	2:53P	INCOMING	CL 605-366-0194	HF	M-M	1	2	0.50			0.50
74	8-06	3:05P	INCOMING	CL 605-366-0194	HF	M-M	1	1	0.25			0.25
75	8-06	5:04P	INCOMING	CL 605-366-0194	HF	L-M	1	3	0.75			0.75
76	8-06	5:50P	INCOMING	CL 605-366-0194		M-M	1	2	0.50			0.50
77	8-07	9:21A	MOBILE	CL 605-366-0629		M-M	4	4	1.00			1.00
78	8-07	9:55A	SIOUX FLS	SD 605-336-3820		M-L	4	3	0.75			0.75
79	8-07	10:10A	GARRETSON	SD 605-594-6412		M-L	4	1	0.25			0.25

CALL CHARACTERISTICS CF-Call Forwarding CW-Call Waiting 3W-3 Way Calling CN-Call Forwarding-No Answer CB-Call Forwarding-Busy
 DP-Dispatch MF-Voice Mail Message Feature CD-Call Delivery MR-Voice Mail Message Retrieval FR-Follow Me Roaming
 HF Rate Follows 1-Peak 2-Off Peak 3-Night P-Person to Person LD-Long Distance A-Direct Dial O-Operator Assisted
 D E-Evening N-Night S-Special DA-Directory Assistance ID-International Directory Assistance

1/21/00
 EXHIBIT
 # 2
 Jerry J. May

Invoice Date 08/26/99
 Account Number 0000509530
 Mobile Number 605-366-1096
 Account Name MINNEHAHA COMMUNITY WATER CORP

For Billing
 Inquiries Call
 1-800-COMMNET
 1-800-266-6638

Detail of Call Charges (605-366-1096)

Line	Date	Time	Called Place	Called Number	Feat	Dir	-----Airtime-----			-----Land-----		Total Charge
							Per	Mins	Charge	Rate	Mins	
20	7-28	11:00P	DELLRAPIDS SD	605-428-4535		M-L	1	2	Free			0.00
21	7-29	7:22A	INCOMING CL	605-366-1096		M-M	1	1	Free			0.00
22	7-29	7:29A	INCOMING CL	605-366-1096		M-M	1	2	Free			0.00
23	7-29	8:50A	INCOMING CL	605-366-1096		M-M	1	2	Free			0.00
24	7-29	9:30A	INCOMING CL	605-366-1096		L-M	1	6	Free			0.00
25	7-29	1:57P	SIOUX FLS SD	605-360-0350	HF	M-L	1	5	Free			0.00
26	7-29	2:18P	SIOUX FLS SD	605-336-8884		M-L	1	2	Free			0.00
27	7-29	4:01P	INCOMING CL	605-366-1096	HF	M-M	1	3	Free			0.00
28	7-30	9:44A	SIOUX FLS SD	605-335-3775	HF	M-L	1	3	Free			0.00
29	7-30	9:51A	SIOUX FLS SD	605-360-1361	HF	M-L	1	3	Free			0.00
30	7-30	9:53A	SIOUX FLS SD	605-334-3204	HF	M-L	1	1	Free			0.00
31	7-30	9:57A	SIOUX FLS SD	605-334-3204		M-L	1	2	Free			0.00
32	7-30	12:19P	INCOMING CL	605-366-1096		L-M	1	1	Free			0.00
33	7-30	12:29P	INCOMING CL	605-366-1096		M-M	1	4	Free			0.00
34	7-30	1:13P	INCOMING CL	605-366-1096		M-M	1	2	Free			0.00
35	7-30	2:00P	INCOMING CL	605-366-1096	HF	M-M	1	1	Free			0.00
36	7-30	3:59P	INCOMING CL	605-366-1096	HF	M-M	1	1	Free			0.00
37	8-02	9:52A	SIOUX FLS SD	605-334-3204		M-L	1	2	0.50			0.50
38	8-02	10:05A	SIOUX FLS SD	605-334-3204		M-L	1	2	0.50			0.50
39	8-02	12:33P	SIOUX FLS SD	605-360-0350		M-L	1	3	0.75			0.75
40	8-02	12:35P	SIOUX FLS SD	605-360-1361		M-L	1	1	0.25			0.25
41	8-02	12:36P	SIOUX FLS SD	605-360-1361		M-L	1	1	0.25			0.25
42	8-02	4:01P	MOBILE CL	605-366-0489		M-M	1	1	0.25			0.25
43	8-02	4:08P	INCOMING CL	605-366-1096		L-M	1	1	0.25			0.25
44	8-02	5:02P	SIOUX FLS SD	605-360-1361		M-L	1	1	0.25			0.25
45	8-02	5:02P	SIOUX FLS SD	605-360-1361		M-L	1	2	0.50			0.50
46	8-02	5:06P	MOBILE CL	605-366-0194		M-M	1	1	0.25			0.25
47	8-02	6:28P	MOBILE CL	605-366-0194		M-M	1	2	0.50			0.50
48	8-03	9:26A	INCOMING CL	605-366-1096		L-M	1	4	1.00			1.00
49	8-03	9:46A	DELLRAPIDS SD	605-428-3374		M-L	1	1	0.25			0.25
50	8-03	9:52A	INCOMING CL	605-366-1096		L-M	1	2	0.50			0.50
51	8-03	9:53A	INCOMING CL	605-366-1096		L-M	1	2	0.50			0.50
52	8-03	11:34A	MOBILE CL	605-366-0489		M-M	1	2	0.50			0.50
53	8-03	12:59P	INCOMING CL	605-366-1096		M-M	1	1	0.25			0.25
54	8-03	1:01P	SIOUX FLS SD	605-360-1361		M-L	1	1	0.25			0.25
55	8-03	1:33P	INCOMING CL	605-366-1096		M-M	1	2	0.50			0.50
56	8-03	1:34P	SIOUX FLS SD	605-360-1361		M-L	1	1	0.25			0.25
57	8-03	1:42P	MOBILE CL	605-366-0489		M-M	1	3	0.75			0.75
58	8-04	7:18A	INCOMING CL	605-366-1096		L-M	1	2	0.50			0.50
59	8-04	7:28A	HARRISBURG SD	605-767-2966		M-L	1	1	0.25			0.25
60	8-04	7:34A	INCOMING CL	605-366-1096		L-M	1	2	0.50			0.50
61	8-04	7:56A	HARRISBURG SD	605-767-2966		M-L	1	2	0.50			0.50
62	8-04	8:01A	SIOUX FLS SD	605-360-1361		M-L	1	2	0.50			0.50
63	8-04	8:10A	INCOMING CL	605-366-1096	HF	L-M	1	1	0.25			0.25
64	8-04	9:09A	INCOMING CL	605-366-1096		L-M	1	1	0.25			0.25
65	8-04	9:12A	INCOMING CL	605-366-1096		L-M	1	1	0.25			0.25
66	8-04	10:04A	DELLRAPIDS SD	605-428-3374		M-L	1	1	0.25			0.25
67	8-04	10:07A	INCOMING CL	605-366-1096		L-M	1	1	0.25			0.25
68	8-04	1:18P	INCOMING CL	605-366-1096		L-M	1	1	0.25			0.25
69	8-04	4:27P	HARRISBURG SD	605-767-2966		M-L	1	5	1.25			1.25
70	8-04	4:57P	INCOMING CL	605-366-1096		L-M	1	2	0.50			0.50
71	8-04	5:16P	MOBILE CL	605-366-0629		M-M	1	2	0.50			0.50
72	8-04	5:41P	INCOMING CL	605-366-1096		L-M	1	2	0.50			0.50
73	8-05	7:13A	INCOMING CL	605-366-1096		L-M	1	1	0.25			0.25
74	8-05	7:14A	INCOMING CL	605-366-1096		L-M	1	4	1.00			1.00
75	8-05	7:44A	INCOMING CL	605-366-1096		L-M	1	2	0.50			0.50
76	8-05	9:30A	HARRISBURG SD	605-767-2966		M-L	1	2	0.50			0.50
77	8-05	10:01A	INCOMING CL	605-366-1096		M-M	1	5	1.25			1.25
78	8-05	10:22A	DELLRAPIDS SD	605-428-3374		M-L	1	1	0.25			0.25
79	8-05	10:23A	MOBILE CL	605-366-0489		M-M	1	2	0.50			0.50
80	8-05	12:56P	HARRISBURG SD	605-767-2966		M-L	1	2	0.50			0.50

CALL CHARACTERISTICS CF-Call Forwarding CW-Call Waiting 3W-3 Way Calling CN-Call Forwarding-No Answer CB-Call Forwarding-Busy
 DP-Dispatch MF-Voice Mail Message Feature CD-Call Delivery MR-Voice Mail Message Retrieval FR-Follow Me Roaming
 HF-Home Rate Follows 1-Peak 2-Off Peak 3-Night P-Person to Person LD-Long Distance A-Direct Dial O-Operator Assisted
 Day E-Evening N-Night S-Special DA-Directory Assistance ID-International Directory Assistance

1/21/00
 EXHIBIT
 # 3
 Jerry J. May

To : SERV
Yr Nm pls: CONNIE KELLER
Company : N/A
A/Phone#::339-3774# //
Address : 1609 S SHAFER
Map Loc : 5419316816
If RE/ a Disconnected Water SEE DIR
for statement.

Message : WATER IS TURNED OFF,
----- 7/29/99 7:23A 6 -----
JIM WILL HAVE SOME CALL US BACK FOR
THE NO WATER CALLS THIS MORNING

#252 Taken Thu 7/29/99 7:22 AM 23 Dlvrd Thu 7/29/99 8:49 AM 23 Msg# 11
WATER OUTAGE-When O/cl or Ofc gives
U info about an area w/out water...
*Take msg * TELL CLR the INFO
Drg Ofc Hrs REFER to Ofc #'S
NON ERs = Refer CL BK DRG OFC HR

To :
Yr Nm pls: INGRID MCCAULLEY //
Company :
A/Phone#::339-1591//
Address : 6104 E SPLITROCK RD
Map Loc : 54-19-525-525
If RE/ a Disconnected Water SEE DIR
for statement.
Message : NO WATER.

52 Taken Thu 7/29/99 7:21 AM 6 Dlvrd Thu 7/29/99 8:49 AM 23 Msg# 12
WATER OUTAGE-When O/cl or Ofc gives
U info about an area w/out water...
*Take msg * TELL CLR the INFO
Drg Ofc Hrs REFER to Ofc #'S
NON ERs = Refer CL BK DRG OFC HR

To :
Yr Nm pls: BETH HINDBJORGEN///
Company :
A/Phone#::338-0060# ///
Address : 1600 SCHAFFER DR
Map Loc : 5419304804# //
If RE/ a Disconnected Water SEE DIR
for statement.
Message : NO WATER
Dialout 7/29/99 7:22A 6 8 93660194

#252 Taken Thu 7/29/99 7:21 AM 23 Dlvrd Thu 7/29/99 8:49 AM 23 Msg# 13
WATER OUTAGE-When O/cl or Ofc gives
U info about an area w/out water...
*Take msg * TELL CLR the INFO
Drg Ofc Hrs REFER to Ofc #'S
NON ERs = Refer CL BK DRG OFC HR

To :
Yr Nm pls: DENNIS HORNER
Company :
A/Phone#::605-332-1172//
Address : 1604 SHAFER DR
Map Loc : DOESNT HAVE
If RE/ a Disconnected Water SEE DIR
for statement.

1/21/00
EXHIBIT
4
Jerry J. May

#252 Taken Thu 7/29/99 7:32 AM 23 Dlvrd Thu 7/29/99 8:49 AM 23 Msg# 6

WATER OUTAGE-When O/cl or Ofc gives
U info about an area w/out water...
*Take msg * TELL CLR the INFO
Drg Ofc Hrs REFER to Ofc #'S
NON ERS = Refer CL BK DRG OFC HR

To :
Yr Nm pls: CECELIA GRUNEWALDT
Company :
A/Phone#::339-1802
Address : 6201 SPLITROCK RD
Map Loc : DOESNT HAVE
Message : Please Call

#252 Taken Thu 7/29/99 7:31 AM 6 Dlvrd Thu 7/29/99 7:31 AM 6 Msg# 7

7/26-7/30-JIM AUEN ON #:9366-0194R8
JIM WILL HAVE SOME ONE CALL IN FOR THE
NO WATER CALL 7/29/99 7:31A 6

#252 Taken Thu 7/29/99 7:28 AM 29 Dlvrd Thu 7/29/99 8:49 AM 23 Msg# 8

WATER OUTAGE-When O/cl or Ofc gives
U info about an area w/out water...
*Take msg * TELL CLR the INFO
Drg Ofc Hrs REFER to Ofc #'S
NON ERS = Refer CL BK DRG OFC HR

To :
Yr Nm pls: SANDY HORST
Company :
A/Phone#::371-2050
Address : 6 MILE RD
Map Loc : 5429309402
If RE/ a Disconnected Water SEE DIR
for statement.
Message : NO WATER AGAIN

#252 Taken Thu 7/29/99 7:24 AM 9 Dlvrd Thu 7/29/99 8:49 AM 23 Msg# 9

WATER OUTAGE-When O/cl or Ofc gives
U info about an area w/out water...
*Take msg * TELL CLR the INFO
Drg Ofc Hrs REFER to Ofc #'S
NON ERS = Refer CL BK DRG OFC HR

To :
Yr Nm pls: KNEIP, MR.
Company :
A/Phone#::605-335-1294#
Address : 6204 SPLIT ROCK RD
Map Loc :
If RE/ a Disconnected Water SEE DIR
for statement.
Message : Please Call HIS WATER HAS
BEEN SHUT OFF AND HE HAS TO GO TO WORK
WAS TOLD IT WOULD NOT BE SHUT OFF
UNTIL AFTER 8 AM

#252 Taken Thu 7/29/99 7:22 AM 35 Dlvrd Thu 7/29/99 8:49 AM 23 Msg# 10

WATER OUTAGE-When O/cl or Ofc gives
U info about an area w/out water...
*Take msg * TELL CLR the INFO
Drg Ofc Hrs REFER to Ofc #'S
NON ERS = Refer CL BK DRG OFC HR

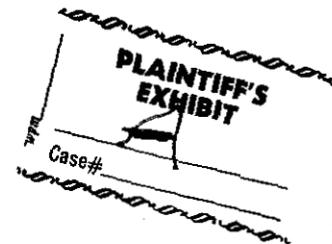
49-7A-12. Notification of damage to underground facility — Civil penalty. If any underground facility is damaged, dislocated, or disturbed in advance of or during excavation work, the excavator shall immediately notify

the operator of the facility, or, if unknown, the one-call notification center of such damage, dislocation, or disturbance. No excavator may conceal or attempt to conceal such damage, dislocation, or disturbance, nor may that excavator attempt to make repairs to the facility unless authorized by the operator of the facility. The board may assess a civil penalty of up to one thousand dollars against any excavator who knowingly violates this section.

Source: SL 1993, ch 346, § 13; 1997, ch 263, § 6.

Amendments.

The 1997 amendment added the last sentence; and made minor changes in punctuation.



**One Call Locates
Six Mile Road**

Ticket Numbers

Date

991880327
991880330
991880334
991880338
991880333
991880336
992520361
992700457
992700458
992700460
992700464
993070074
993070074
993070076

7/07/99
7/07/99
7/07/99
7/07/99
7/07/99
7/07/99
9/09/99
9/27/99
9/27/99
9/27/99
9/27/99
11/03/99
11/03/99
11/03/99

July 8, 1999

Winnebago County Highway Project #MC 119GB
"Six Mile Road" Project

Notes from Preconstruction Meeting held July 7, 1999 at 9:30 A.M.

Notes and comments from Prime Contractor:

Prime Contractor on the project will be R&G Construction.

Doug Weber will be the project superintendent.

A list of sub-contractors on the project was given to Bob Meister of Minn. Co. Hwy. Dept.

Asphalt will be supplied by Concrete Materials - ASCO will place.

Pit Data: Material coming from Iowa along County Rd. #115 to 38, 26th St. and Madison St. - signing is not set up for this. TSS will need to be contacted.

Overe Pit - Sec. 24 T Sioux Township, 3 miles South of Iowa border - west of road. County will provide haul road agreement.

Retaining wall has not yet been subcontracted.

R & G stated that work will start on the south end of the project, proceeding north, different stretches at a time. Pine Lake Hills will be nearly first.

Concerns were raised by R & G regarding utility company issues. Due to scheduling of the work, there could be problems with utility relocation prior to beginning dirt work.

Contractor will work 7:00-7:30 five days per week. Work should be completed to Madison St. by the end of July. At the end of the third week, work should be completed to 26th St. Completion date is estimated to be Oct. 1, 1999. A project schedule will be provided.

Contractor will have 6 scrapers, 2-3 dozers 1-2 blades, 1-2 disks, at least 1 sheeps foot, and water will be provided as needed.

Box culverts will be installed the week of July 20, 1999. Hansons will be hauling.

Prime Contractor raised a suggestion that weekly meetings with landowners should be held. Landowner concerns must involve Minn. Co. personnel. Wed. or Thurs. meetings will be scheduled. It was decided that Wed. evening meetings will be held on the project.

Concerns raised by Bob Meister:

Landowner issues: *See above comment.*

Weekend gravel for access to landowners will be provided. Home number of responsible person is needed.

CCO's will be signed by Contractor (Rick or father) and County (Bob Meister or Dave Quitten).

R & G will provide dust control on haul roads.

No certified payrolls are required for this project.

Bi-weekly pay estimates will be submitted.

A list of ROW agreements will be provided by County

Utility concerns:

Manifold property will need to be worked around by utilities.

Comment re: Electrical (East River) on South End - coordination will be needed with contractor. NSP has concerns with sub-station which will need to be off-line for the box culvert installation. Coordination with contractor and sub necessary.

Some information (staking) will be needed north of Madison and along Maple for Split Rock Telephone.



South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

February 22, 2000

Mr. Jerome B. Lammers
Attorney at Law
P. O. Box 45
Madison, SD 57042

Mr. Ronald G. Schmidt
Attorney at Law
P. O. Box 1174
Pierre, SD 57501

Re: In the Matter of the Complaint filed by Minnehaha
Community Water Corporation, Dell Rapids, South
Dakota, against R & G Construction, Marshall Minnesota

Enclosed each of you will find a copy of Notice of Entry of Order in the above
captioned matter. This is intended as service upon you by mail.

Very truly yours,

Camron Hoseck
Staff Attorney

CH:dk
Enc.

Capitol Office
Telephone (605)773-3201
FAX (605)773-3809

Transportation/
Warehouse Division
Telephone (605)773-5280
FAX (605)773-3225

Consumer Hotline
1-800-332-1782

TTY Through
Relay South Dakota
1-800-877-1113

Internet Website
www.state.sd.us/puc/

◆
Jim Burg
Chairman
Pam Nelson
Vice-Chairman
Laska Schoenfelder
Commissioner

William Bullard Jr.
Executive Director

Harlan Best
Martin C. Bettmann
Sue Cichos
Karen E. Cremer
Terry Emerson
Michele M. Farris
Marlette Fischbach
Heather K. Forney
Shirleen Fugitt
Mary Giddings
Lewis Hammond
Leni Healy
Mary Healy
Camron Hoseck
Lisa Hull
Dave Jacobson
Jennifer Kirk
Bob Knadle
Delaine Kolbo
Charlene Lund
Gregory A. Rislov
Keith Senger
Rolayne Ailts Wiest
◆

**BEFORE THE ONE-CALL NOTIFICATION BOARD
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE COMPLAINT FILED) NOTICE OF ENTRY OF
BY MINNEHAHA COMMUNITY WATER) ORDER
CORPORATION, DELL RAPIDS, SOUTH)
DAKOTA, AGAINST R & G CONSTRUCTION,)
MARSHALL MINNESOTA)

TO: MINNEHAHA COMMUNITY WATER CORPORATION, AND ITS ATTORNEY,
JEROME B. LAMMERS; AND R & G CONSTRUCTION, AND ITS ATTORNEY,
RONALD G. SCHMIDT:

Notice is hereby given that Findings of Fact and Conclusions of Law and Order, a copy of which is attached hereto, was entered and filed by the One-Call Notification Board on the 22nd day of February, 2000, in the office of the South Dakota Public Utilities Commission, Pierre, South Dakota.

Dated this 22nd day of February, 2000.



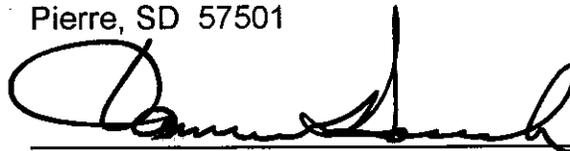
Camron Hoseck
Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501
Telephone (605) 773-3201

CERTIFICATE OF SERVICE

I hereby certify that copies of the Notice of Entry of Order were served on the following by mailing the same to them by United States Post Office First Class mail, postage thereon prepaid, at the address shown below on this the 22nd day of February, 2000.

Mr. Jerome B. Lammers
Attorney at Law
P. O. Box 45
Madison, SD 57042

Mr. Ronald G. Schmidt
Attorney at Law
P. O. Box 1174
Pierre, SD 57501



Camron Hoseck
Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501

**BEFORE THE ONE-CALL NOTIFICATION BOARD
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE COMPLAINT FILED)	FINDINGS OF FACT AND
BY MINNEHAHA COMMUNITY WATER)	CONCLUSIONS OF LAW
CORPORATION, DELL RAPIDS, SOUTH)	AND ORDER
DAKOTA, AGAINST R & G CONSTRUCTION,)	
MARSHALL, MINNESOTA)	

This matter came on for hearing before the One-Call Notification Board of the State of South Dakota (Board) at a duly noticed hearing on January 21, 2000, at the Jefferson Room, Ramkota Inn, 2400 North Louise Avenue, Sioux Falls, South Dakota. Board members present were Todd Chambers, Chairman, Jim Lewis, Pat Gilligan, Curt Pohl, Harold Anderson, Tom Krueger, Doug Bierschbach and Eugene Solseth. Minnehaha Community Water Corporation (Minnehaha) was represented by Jerome B. Lammers of Madison, South Dakota. R & G Construction (R&G) was represented by Ronald G. Schmidt of Pierre, South Dakota. Camron Hoseck acted as the Board's counsel.

The Board, having heard and considered the testimony and evidence adduced upon said hearing and being fully advised in the premises, makes its Findings of Fact and Conclusions of Law, as follows: (page references are to the hearing transcript or exhibits)

FINDINGS OF FACT

1. Minnehaha is a rural water corporation with approximately four thousand customers in Minnehaha, Lincoln, McCook and Moody Counties of South Dakota. (Tr 7).
2. R&G is a highway heavy construction, private development and utility contractor from Marshall, Minnesota. (Tr 35, 36).
3. R&G had a contract to re-grade a project in Minnehaha County, South Dakota, commonly known as the six mile road project (project). (Tr 38).
4. Minnehaha had water distribution lines in and through the project. (Tr 8).
5. On the morning of July 29, 1999, three leaks occurred in the Minnehaha distribution system which was within the work limits of the project. (Tr 13, 18; Ex 1).
6. R&G caused the leaks described in Finding No. 4, above. (Tr 15, 16).
7. Minnehaha's employees were already en route to the project when they received notice through their plant operator that there was a leak from Minnehaha's system on the project. (Tr 13).

8. By the time R&G through its grading foreman, Doug Weber, discovered the leaks and damage to Minnehaha's distribution system located within the project, Minnehaha's construction foreman, Dan Buseth, was already on the job taking care of the leaks (Tr 97) thereby making Minnehaha immediately aware of the damage to Minnehaha's distribution system.

9. R&G did not conceal or attempt to conceal the damage that it did to Minnehaha's distribution system. (Tr 21, 98).

10. R&G did not knowingly violate SDCL 49-7A-12.

That from the foregoing Findings of Fact, the Board makes and enters its

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter pursuant to SDCL 49-7A-12.

2. Minnehaha had notice of the damage to its distribution system on its own accord prior to R&G's knowing it had done such damage.

3. R&G did not conceal or attempt to conceal the damage which it did to Minnehaha's distribution system within the project.

4. R&G did not knowingly violate SDCL 49-7A-12.

5. No civil penalty shall be assessed against R&G.

WHEREFORE, the Board ORDERS that Minnehaha's petition that the Board assess civil penalties against R&G shall be denied.

Dated this 14th day of February, 2000.

Date: 2/14/00


Todd Chambers
Chairman

Date: Feb. 2, 2000

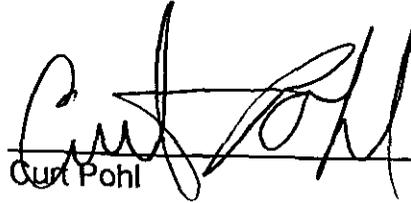

Pat Gilligan

Date: 2-4-2000



Jim Lewis

Date: 2-11-00


Curt Pohl

Date: 2-10-00


Eugene Solseth

Date: 2/1/00

Tom Krueger
Tom Krueger

Date: 2/3/00

Harold Anderson
Harold Anderson

Date: 2/15/00

Doug Bierschbach
Doug Bierschbach