

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE COMPLAINT BY
OTTERTAIL POWER COMPANY AGAINST
ROBERT KOHL CONSTRUCTION**

) **ORDER GRANTING CIVIL**
) **COURT FILING**
)

OC10-009

On November 29, 2010, the South Dakota Public Utilities Commission (Commission) received a complaint from Otter Tail Power Company against Robert Kohl Construction. The complaint alleges excavation occurred at 509 Old Agency St., Sisseton, South Dakota, without providing advance notice through the South Dakota One Call System. Robert Kohl Construction did not dispute the allegations. On January 10, 2011, pursuant to SDCL 49-7A-22 a panel was appointed to make a recommendation to the South Dakota One Call Board regarding whether probable cause exists to believe the violation occurred as described in the Complaint (herein the Panel). The Panel met and determined probable cause exists to find a violation of SDCL 49-7A-5 occurred. In addition, and also pursuant to SDCL 49-7A-22 the Panel recommended a one-thousand dollars (\$1,000) penalty, with five hundred dollars (\$500) suspended if several conditions were met. Neither party requested a hearing in this matter and pursuant to SDCL 49-7A-27 the Panel's recommendation was considered accepted by both. At its scheduled meeting of February 16, 2011, the South Dakota One Call Board, pursuant to SDCL 49-7A-27, reviewed the Panel's procedure, approved its findings and issued an Order regarding the same. Robert Kohl Construction failed to make payment, is out of compliance with the Board Order and the full One Thousand Dollar (\$1,000) penalty is now due. On April 6, 2011 a demand letter was sent to Robert Kohl Construction pursuant to SDCL 49-7A-33. The One Call Board of South Dakota met on May 18, 2011 to consider this matter and voted unanimously to request the Commission bring an action in the name of the State of South Dakota for recovery of the penalty pursuant to SDCL 49-7A-28.

At the May 31, 2011, meeting, the Commission discussed the One Call Board's request. The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapter 49-7A-28. The Commission finds it is appropriate to bring an action to recover the One Call penalty of \$1,000.

It is therefore

ORDERED, that action be brought in the name of the State of South Dakota to recover the One Call penalty in docket OC10-009.

Dated at Pierre, South Dakota, this 17th day of June, 2011.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.
By: <u><i>Kevin Ordall</i></u>
Date: <u>6-17-11</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Steve Kolbeck
STEVE KOLBECK, Chairman

Gary Hanson
GARY HANSON, Commissioner

Chris Nelson
CHRIS NELSON, Commissioner