

**BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD**

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IN THE MATTER OF THE COMPLAINT	)	ENFORCEMENT PANEL
BY OTTER TAIL POWER COMPANY	)	RECOMMENDATION TO THE
AGAINST CARLSON EXCAVATING	)	SD ONE CALL BOARD
	)	OC11-002

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On June 7, 2011, the South Dakota Public Utilities Commission received a complaint from OtterTail Power Company (herein "OtterTail") against Carlson Excavating (herein "Carlson"). The complaint alleges Carlson did not wait the statutorily required time prior to excavation. Specifically, OtterTail arrived at the planned excavation site to locate facilities only to discover excavation had already occurred in violation of SDCL 49-7A-5.

Carlson replied to the complaint on June 20, 2011. Carlson admitted to excavation at the site at issue, and admitted a miscommunication occurred which resulted in the violation. The owner of Carlson met with its excavation foremen and initiated a plan to avoid future violations.

On July 13, 2011, pursuant to SDCL 49-7A-22 a panel of five One Call Board members (herein "Panel") convened. The Panel met to determine whether probable cause exists to believe the violation occurred as described in the complaint.

The Panel found probable cause exists to believe a violation of SDCL 49-7A-5 occurred.

The Panel found the violation to be unintentional and appreciates the efforts Carlson states it will make in the future to avoid violations. As such the Panel looked to SDCL 49-7A-18 to determine proper penalties.

The Panel found it proper to assess a Five Hundred Dollar (\$500) penalty against Carlson as there is no dispute whether the violation occurred.

The Panel found it proper, however, to suspend the entire Five Hundred Dollar (\$500) penalty due to the explanation from Carlson, the action the owner took after receipt of the complaint and the precautions he intends to take going forward. This is the first SD One Call Complaint against Carlson. **According to this recommendation no penalty is due and owing at this time.**

The Panel recommends, however, the full Five Hundred Dollar (\$500) penalty become immediately due and payable if Carlson is found guilty of a violation of SDCL 49-7A or ARSD Article 20:25 within the twelve months following the date of the final South Dakota One Call Board Order.

The Panel recommends the South Dakota One Call Board accept its findings and recommendations herein.

If either party to this Complaint disagrees or objects to the recommendations or findings herein, a hearing may be requested. To request a hearing you must reply within twenty days from the date of service of this notice. Failure to request a hearing is considered acceptance of the recommendations and findings herein. The South Dakota One-Call Notification Board has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-7A and ARSD 20:25.

**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.

  
Larry L. Janes, Executive Director

Date July 14, 2011