

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

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IN THE MATTER OF THE COMPLAINT )	ENFORCEMENT PANEL
BY NORTHWESTERN ENERGY )	RECOMMENDATION TO
AGAINST SPLIT ROCK )	THE SD ONE CALL BOARD
CONTRACTING, INC. )	

OC11-003

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On July 11, 2011, the South Dakota Public Utilities Commission received a complaint from NorthWestern Energy (herein "NorthWestern") against Split Rock Contracting, Inc. (herein "Split Rock"). The complaint alleges Split Rock did not wait the statutorily required time prior to excavation. Specifically, NorthWestern arrived at the planned excavation site on June 1, 2011 to locate facilities pursuant to a locate ticket with an excavation start date of June 2, 2011. On June 1, NorthWestern alleges excavation had already occurred and was complete.

Split Rock replied to the complaint on August 1, 2011. The reply states Split Rock originally requested facilities to be marked on April 24, 2011. The company explains it then requested facilities to be relocated on May 31, 2011. Although Split Rock does not specify when, it states it met with NorthWestern regarding the location of facilities prior to excavation. The company does not address whether it performed excavation outside the legally proper time. Rather, it stated "all marks were present from the first locate request."

On August 30, 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 and whether penalties are appropriate.

The Panel found probable cause exists to believe a violation of SDCL 49-7A-5 occurred. Specifically, the April 24, 2011 ticket had expired and was no longer valid and Split Rock did not wait the requisite 48 hours pursuant to the May 31, 2011 ticket. Due to the other action taken, however, to protect the facilities the Panel did not find the violation to be intentional. As such the Panel looked to SDCL 49-7A-18 to determine proper penalties.

**The Panel found it proper to assess a One Thousand Dollar (\$1,000) penalty against Split Rock due to: its lack of plans or procedures to prevent future violations of One Call laws and rules and the fact that principal officers of Split Rock have been involved in three other One Call compliance filings. The Panel found it proper, however, to suspend Five Hundred Dollars (\$500) of the penalty because: no damage was done nor was there an unusual degree of threat to the public. See SDCL 49-7A-26**

**The Panel further recommends the suspended Five Hundred Dollar (\$500) penalty become immediately due and payable if: (i) Split Rock is found guilty of an additional 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 or (ii) if it fails to make payment of the remaining un-suspended Five Hundred Dollars (\$500) within thirty days of receipt of the final 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, by facsimile by first class mail, or by other electronic means.

  
Larry L. Janes, Executive Director

Date 8-31-2011