

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

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IN THE MATTER OF THE COMPLAINT	) ORDER ADOPTING
FILED BY MONTANA-DAKOTA UTILITIES	) ENFORCEMENT PANEL
CO. AGAINST RCS CONSTRUCTION,	) RECOMMENDATION, TO
RAPID CITY, SOUTH DAKOTA FOR AN	) PURSUE COLLECTION ACTION
INCIDENT OCCURING ON MARCH 25, 2012	) IF NECESSARY AND TO CLOSE
	) DOCKET
	)
	) OC12-007

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On May 16, 2012 the South Dakota Public Utilities Commission received a complaint from Montana-Dakota Utilities Co. (herein "MDU") against RCS Construction of Rapid City, South Dakota. The complaint alleges RCS Construction performed excavation without valid locates.

A copy of the complaint was sent to RCS Construction on May 18, 2012. RCS Construction responded to the Complaint on June 4, 2012. In its response RCS Construction admits it was excavating under a prior ticket.

On June 18, 2012, pursuant to SDCL 49-7A-22 a panel of five One Call Board members (herein "Panel") convened. The Panel found sufficient evidence was presented to determine probable cause exists to believe a violation of SDCL 49-7A-5 occurred. Specifically, the Panel found RCS Construction failed to have facilities marked and to wait the requisite time prior to excavation. The Panel did not find the violation intentional.

The Panel recommends a One Thousand Dollar (\$1,000) penalty. The Panel found it proper to conditionally suspend Seven Hundred Fifty Dollars (\$750) of the penalty under the following recommended conditions:

- (i) RCS Construction shall make payment of the **Two Hundred Fifty Dollar (\$250) unsuspended portion** of the penalty within thirty days of issuance of this Order.
- (ii) RCS Construction must not be found guilty of a One Call violation in the next 12 months.
- (iii) RCS Construction shall attend an excavator meeting put on by the SD One Call Board in the spring of 2013.

If any of the conditions are not met, the entire One Thousand Dollar Penalty (\$1,000) will be immediately due and owing.

At its scheduled meeting of October 3, 2012, the South Dakota One Call Board, pursuant to SDCL 49-7A-27, reviewed the Panel's procedure and approved its findings.

THE ONE CALL BOARD OF SOUTH DAKOTA HEREBY ORDERS, the terms and conditions as recommended by the Panel as final resolution of this complaint. The Panel's findings are attached hereto and shall be considered and fully incorporated herein; and it is

FURTHER ORDERED, if the penalty is not paid, the Board shall pursue any rights it has under the law regarding collection; and it is

FURTHER ORDERED this docket shall be dismissed and closed.

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

**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 10-4-2012

BY ORDER OF THE SD ONE-CALL BOARD:

Dated at Ft. Pierre, South Dakota,

this 3<sup>rd</sup> day of Oct., 2012

  
Kurt Pfeifle  
Chairman