

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

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IN THE MATTER OF THE COMPLAINT            ) ENFORCEMENT PANEL  
FILED BY MONTANA-DAKOTA UTILITIES        ) RECOMMENDATION TO  
CO. AGAINST RCS CONSTRUCTION,            ) THE SD ONE CALL BOARD,  
RAPID CITY, SOUTH DAKOTA FOR AN         )  
INCIDENT OCCURRING ON MARCH 25, 2012    )            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 met to determine whether probable cause exists to believe the violation occurred as described in the complaint. 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 found it proper to assess a One Thousand Dollar (\$1,000) penalty. The penalty recommendation is based on the respondent's failure to articulate a plan to prevent future violations. The Panel found it proper to conditionally suspend Seven Hundred Fifty Dollars (\$750) of the penalty under the following 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 the final SD One Call Board 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.

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 June 18, 2012