

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

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IN THE MATTER OF THE COMPLAINT            ) ENFORCEMENT PANEL  
FILED BY CHARLES MIX ELEXTRIC, INC.       ) RECOMMENDATION TO  
AGAINST WAGNER BUILDING AND SUPPLY     ) THE SD ONE CALL BOARD,  
WAGNER, SOUTH DAKOTA FOR AN            )  
INCIDENT OCCURRING ON JUNE 5, 2012     )            OC12-008

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On June 13, 2012 the South Dakota Public Utilities Commission received a complaint from Charles Mix Electric, Inc. (herein "Charles Mix") against Wagner Building and Supply of Wagner, South Dakota. The complaint alleges Wagner Building and Supply performed excavation without valid locates.

A copy of the complaint was sent to Wagner Building and Supply on June 13, 2012. Wagner Building and Supply responded to the Complaint on July 3, 2012. In its response Wagner Building and Supply explained it was working under emergency conditions. It believed an emergency ticket had been called in, when in fact it had not. Wagner Building and Supply further explained it will take efforts to prevent this from happening in the future.

On July 25, 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 Wagner Building and Supply failed to wait the requisite time prior to excavation. The Panel did not find the violation intentional.

The Panel found it proper to assess a Five Hundred Dollar (\$500) penalty. The Panel found it proper, however, to conditionally suspend Two Hundred Fifty Dollars (\$250) of the penalty due to Wagner Building and Supply's response to the Complaint and the efforts it stated it will take in the future to prevent the incident from happening again.

The suspension conditions are as follows:

- (i) Wagner Building and Supply 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) Wagner Building and Supply must not be found guilty of a One Call violation in the next 12 months.
- (iii) Wagner Building and Supply 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 Five Hundred Dollar Penalty (\$500) 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 7-26-2012

**REQUEST FOR A HEARING  
COMPLAINT OC12-008**

**I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC12-008  
AND REQUEST A HEARING.**

\_\_\_\_\_  
**Signature – Wagner Building & Supply**

\_\_\_\_\_  
**Date**

**I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC12-008  
AND REQUEST A HEARING.**

\_\_\_\_\_  
**Signature – Charles Mix Electric, Inc.**

\_\_\_\_\_  
**Date**

**YOUR REQUEST FOR A HEARING MUST BE SENT TO ALL OTHER  
PARTIES INCLUDING:**

**SOUTH DAKOTA ONE CALL NOTIFICATION BOARD  
C/O SOUTH DAKOTA PUBLIC UTILITIES COMMISSION  
500 E. CAPITOL AVE.  
PIERRE, SD 57501-5070**

**Failure to request a hearing, results in acceptance of the Enforcement  
Committee's recommendation. In that case, the One Call Board will Order the  
recommendation as the final disposition of this Complaint.**

**MINUTES**  
**SOUTH DAKOTA ONE CALL NOTIFICATION BOARD**  
**ENFORCEMENT PANEL CONFERENCE CALL**  
**July 25, 2012, 10 AM Central Time, 9 AM Mountain Time**

**Roll Call:**

Enforcement Panel Members in attendance: **Erin Hayes; Todd Chambers; Gene Solseth; Fay Jandreau; Ed Anderson;** Legal Counsel, Kara Semmler; Executive Director, Larry Janes.

**Also in attendance:**

Ron Blum, Montana-Dakota Utilities Co.  
Gordon Woods, South Dakota Interstate Pipeline Co.  
Colleen Zilligen, Absolute Contracting Service, Inc.

**Order of Business:**

Larry Janes provided a brief description of the Enforcement Panel process, including that this is a legal proceeding and that no comments by either party may be taken during this call. The determination of whether probable cause exists that a violation of South Dakota One Call laws may have, or may not have, occurred will only be made after consideration of the written documentation provided in the complaint and by the rebuttal information received from the defendant. Both parties will be provided the Panel's recommendation in writing. Each party will be given the opportunity to request a hearing before the full South Dakota One Call Notification Board, if either disagrees with the recommendation of the Panel. The request must be received within 20 days of issuance of the recommendation. If a hearing is not requested, the Enforcement Panel recommendation will be presented to the South Dakota One Call Board of Directors for acceptance at the next Board Meeting. A final Order will then be mailed to each party. If a penalty amount is assessed, payment must be made within 30 days of the issuance of the Order.

**In the matter before the South Dakota One Call Notification Board Enforcement Panel**

**OC12-008 In the Matter of the Complaint filed by Charles Mix Electric, Inc. against Wagner Building and Supply.** On June 13, 2012 Charles Mix Electric, Inc., Lake Andes, SD, filed a South Dakota One Call Complaint alleging that Wagner Building and Supply, Wagner, SD, began digging before the 48 hours on the ticket. Wagner Building and Supply responded on July 2, 2012 stating that they believed they had an Emergency locate request. Wagner Building and Supply further stated that in the future they will clearly state and receive positive affirmation from the One Call representative whether a request is routine or emergency. Larry Janes stated there have been no previous complaints filed against Wagner Building and Supply.

**Today, shall the Enforcement Panel of the South Dakota One Call Notification Board find that there is probable cause that Wagner Building and Supply violated any statute or rule under the jurisdiction of the Board, and if so shall a civil penalty be assessed?**

Erin Hayes stated that Charles Mix Electric would have responded to an Emergency Ticket, if that ticket type had been requested. Todd Chambers noted that a contractor has a responsibility to request the correct ticket type on a locate. Todd Chambers then made a motion stating that probable cause exists that a violation of South Dakota One Call law occurred. Erin Hayes seconded the motion. There was no further discussion. **Motion carried unanimously upon a roll call vote.**

Todd Chambers stated that he felt this was an unintentional violation. Erin Hayes agreed and said she appreciated their response. Todd Chambers made a motion that this was an unintentional violation. Gene Solseth seconded the motion. **Motion carried unanimously upon a roll call vote.**

Gene Solseth stated the contractor should have verified the markings with the names on the locate request. If a utility had not responded, the excavator had a responsibility to contact that utility to verify if they had received the ticket or if there were no facilities in the area. Gene Solseth then made a motion to assess a penalty of \$500 with \$250 suspended, if they have no further violations within the next twelve months, if the penalty is paid within thirty days of the final order, and if they attend a South Dakota One Call Spring Excavator meeting. Todd Chambers seconded the motion. Further discussion continued by Fay Jandreau stated there was no damage, and Todd Chambers stated that if an operator has no facilities at an excavation site, they're required to mark "no" at that location. Erin Hayes stated that an excavator needs to look at the ticket to verify the utilities in the area. Fay Jandreau mentioned there was a public safety issue in this case with a hole in the road needing repair and that Wagner Building and Supply was being responsible. Gene Solseth stated that public safety could have been amplified with more damage being caused by digging without all locates being completed. **Motion carried unanimously upon a roll call vote.**

**OC12-009 In the Matter of the Complaint filed by South Dakota Intrastate Pipeline Co. against Absolute Contracting Service, Inc.** On June 19, 2012 South Dakota Intrastate Pipeline Co., Pierre, SD, filed a South Dakota One Call Complaint alleging that Absolute Contracting Service, Inc., Ball Ground, Ga., exposed a South Dakota Intrastate Pipeline Co. high profile pipeline without permission and without having a company representative present. Absolute Contracting Service, Inc. responded on July 9, 2012 stating they were unaware of the protocol involved with this utility and immediately stopped digging once they knew they were to have a company representative present. Personnel have been made aware of the seriousness of the situation and have ensured Gordon Woods and Chris Carlson this type of practice will never happen again. Larry Janes stated there have been no previous complaints filed against Absolute Contracting Service, Inc.

**Today, shall the Enforcement Panel of the South Dakota One Call Notification Board find that there is probable cause that Absolute Contracting Service, Inc. violated any statute or rule under the jurisdiction of the Board, and if so shall a civil penalty be assessed?**

Erin Hayes asked if High Profile facilities are indicated on locate tickets. Larry Janes responded that today an asterisk placed next to the operator on a locate ticket indicates High Profile, but that procedures are being implemented to provide more information on locate tickets regarding High Profile. He went on to state that it is an operator's responsibility to initiate a meeting with an excavator when work near a high profile will occur per Administrative Rule 20:25:03:12:02. Todd Chambers stated the excavator also had responsibilities here. Gene Solseth stated that both the operator and the excavator

did. Kara Semmler stated a concern she has that an excavator has a responsibility and shouldn't just dig because a call doesn't occur. Todd Chambers made a motion that there is probable cause that a violation of South Dakota One Call law occurred. Fay Jandreau seconded the motion. **Motion carried unanimously upon a roll call vote.**

Todd Chambers made a motion that the violation was unintentional. Erin Hayes seconded the motion. **Motion carried unanimously upon a roll call vote.**

Gene Solseth made a motion that a \$1,000 penalty be assessed, with \$1,000 suspended, with the condition that Absolute Contracting Service, Inc. become familiar with South Dakota One Call laws. The motion died for lack of a second. Ed Anderson made a motion stating that because there was significant threat to the public that a \$1,000 penalty be assessed, with \$500 suspended, that payment must be received within 30 days of the final order, and that they attend a South Dakota One Call Spring Excavator meeting to become more familiar with One Call laws and administrative rules. Todd Chambers seconded the motion. Gene Solseth mentioned that we had a previous complaint where we included the requirement for a documented safety meeting with the staff. Ed Anderson amended his motion to include a documented safety meeting requirement. Todd Chambers suggested that Absolute Contracting Service had made an effort to maintain future compliance. Fay Jandreau mentioned that in their response Absolute Contracting had made a call to Charles Mix Electric, and had policed themselves. There being no further discussion a roll call vote of Ed Anderson's motion with the amendment was taken. A call for the vote was made. Erin Hayes, Todd Chambers, and Ed Anderson voted in favor, Gene Solseth and Fay Jandreau voted against. **Motion carried upon a roll call vote.**

**OC12-010 In the Matter of Montana-Dakota Utilities Co. against Excavating Specialists.** On June 26, 2012, Montana-Dakota Utilities Co., Rapid City, SD filed a South Dakota One Call Complaint alleging that Excavating Specialists, Rapid City, SD, did not have a valid ticket at the point of a damaged gas line. Excavating Specialists responded that they discovered they had gotten outside the boundary of their locate request when a four inch gas main was damaged. Excavating Specialists admitted it was their fault and that it was unintentional. They have reviewed their process and have met with all crew members regarding this incident. Larry Janes stated there have been no previous complaints filed against Excavating Specialists.

**Today, shall the Enforcement Panel of the South Dakota One Call Notification Board find that there is probable cause that Excavating Specialists violated any statute or rule under the jurisdiction of the Board, and if so shall a civil penalty be assessed?**

Erin Hayes stated that it may have been helpful if a locate ticket would have been supplied with the complaint. Fay Jandreau said that based on the complaint and the response probable cause exists that a violation of South Dakota One Call law occurred. He made a motion stating the same. Gene Solseth seconded. **Motion carried unanimously upon a roll call vote.**

Fay Jandreau stated that Excavating Specialists was already working outside the area on their locate ticket when they discovered the hand hold. Erin Hayes mentioned that when pulling fiber from hand hold to hand hold was when the damage may have been discovered, and stated again that providing a locate ticket would have been helpful to the Panel. She also said that a locate ticket should have been

requested from the operator, so damage to the operator's facility wouldn't occur. Todd Chambers agreed. Fay Jandreau stated that significant effort wasn't made to make certain they were working within their locate ticket location. Erin Hayes made a motion that this violation was intentional. Fay Jandreau seconded the motion. A call for the vote was made. Erin Hayes, Gene Solseth, Fay Jandreau, and Ed Anderson voted in favor. Todd Chambers voted against. **Motion carried upon a roll call vote.**

Erin Hayes made a motion to assess a \$1,000 penalty with \$750 suspended. Gene Solseth seconded. Fay Jandreau asked about the danger of the pressure in a 4" gas main. Todd Chambers stated the pressure is typically low, but it could pose a risk. Erin Hayes rescinded the motion. Todd Chambers mentioned the penalty could be as high as \$5,000, if it had been considered intentional. Fay Jandreau then made a motion to assess a penalty of \$1,000 with \$500 suspended if paid within 30 days of the final order, and if no violations occur within twelve months of that order. Ed Anderson seconded the motion. Gene Solseth stated that there was a potential for greater damage. **Motion carried unanimously upon a roll call vote.**

Larry Janes asked if there was any further discussion. Upon being none, he asked for a motion to adjourn. Gene Solseth so moved. Todd Chambers seconded the motion. **Motion carried unanimously on a Roll Call vote.**

**Meeting Adjourned**

Minutes of this meeting were prepared by Larry Janes, Executive Director, South Dakota One Call Notification Board.