

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT) ORDER ADOPTING
FILED BY CHARLES MIX ELECTRIC, INC.) ENFORCEMENT PANEL
AGAINST WAGNER BUILDING AND SUPPLY) RECOMMENDATION, TO
WAGNER, SOUTH DAKOTA FOR AN) PURSUE COLLECTION ACTION
INCIDENT OCCURING ON JUNE 5, 2012) IF NECESSARY AND TO CLOSE
) DOCKET
)
) OC12-008

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 recommend 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 recommended 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 this 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 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 it 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



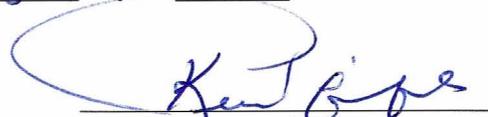
Larry L. Janes, Executive Director

Date 10-4-2012

BY ORDER OF THE SD ONE-CALL BOARD:

Dated at Ft. Pierre, South Dakota,

this 3rd day of Oct., 2012



Kurt Pfeifle
Chairman