

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

---

IN THE MATTER OF THE COMPLAINT	) ORDER TO REJECT
FILED BY SOUTH DAKOTA INTRASTATE	) ENFORCEMENT PANEL
PIPELINE CO. AGAINST ABSOLUTE	) RECOMMENDATION, AND
CONTRACTING SERVIC INC. FOR AN	) TO CLOSE DOCKET
INCIDENT OCCURRING ON JUNE 12, 2012	) OC12-009
IN LOWRY, SD.	)

---

On June 19, 2012 the South Dakota Public Utilities Commission received a complaint from South Dakota Intrastate Pipeline Co. (herein "SDIP") against Absolute Contracting Service Inc. (herein "Absolute") of Ball Ground, Georgia. The complaint alleges Absolute performed excavation in violation of ARSD 20:25:03:10.02 when it commenced excavation without a site visit from the operator.

A copy of the complaint was sent to Absolute on June 20, 2012. Absolute responded to the Complaint on July 9, 2012. In its response Absolute explained that it was unaware of the site visit requirement and that 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 ARSD 20:25:03:10.02 occurred. Specifically, the Panel found Absolute commenced excavation prior to the requisite site visit. The Panel did not find the violation intentional.

The Panel found it proper to assess a One Thousand Dollar (\$1,000) penalty due to the degree of danger when excavating around high profile facilities. The Panel found it proper, however, to conditionally suspend Five Hundred Dollars (\$500) of the penalty due to Absolute'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) Absolute shall make payment of the **Five Hundred Dollar (\$500) unsuspending portion** of the penalty within thirty days of issuance of this Order.
- (ii) Absolute must not be found guilty of a One Call violation in the next 12 months.
- (iii) Absolute shall attend an excavator meeting put on by the SD One Call Board in the spring of 2013.
- (iv) Absolute shall conduct and document an in-house gas safety meeting for its employees specifically focused on South Dakota procedures. The meeting shall be held within 30 days of this Order. Documentation shall include the printed and signed names of the meeting participants, details of the material discussed along with the date and length of the meeting. Documentation shall be submitted to the Executive Director of South Dakota One Call.

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

After receipt of the Panel's Recommendation, Absolute requested a hearing based on evidence it did not present in its initial response. Specifically, Absolute provided a copy of its ticket and pointed to language on the ticket stating, the operator may require the excavator to be present, **"if not contacted, you may conduct work in a normal manner."** Absolute believes it followed instruction on the ticket. The language conflicts with relevant SD Administrative Rules.

The information submitted by Absolute indicates a procedural error and a resulting injustice. Although the Panel did properly review only the evidence submitted into the record prior to the Panel meeting, it was unaware of a language error on the SD One Call ticket itself. The Board believes Absolute did follow instruction on the ticket and should not be penalized for doing so. It is this Board's responsibility to assure a reasonable and just resolution of Complaints. It is neither reasonable nor just to assess a penalty in this Complaint due to procedural error. As a result, at its scheduled meeting of October 3, 2012, the South Dakota One Call Board, pursuant to SDCL 49-7A-27, rejected the Panel's findings.

THE ONE CALL BOARD OF SOUTH DAKOTA HEREBY ORDERS, the Panel's findings be rejected; and it is

FURTHER ORDERED, this docket shall be dismissed and closed without civil penalty or violation.

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 Fl. Pierre, South Dakota,

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

  
Kurt Pfeifle  
Chairman