

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

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IN THE MATTER OF THE COMPLAINT FILED BY MONTANA-DAKOTA UTILITIES AGAINST EXCAVATING SPECIALISTS FOR AN INCIDENT OCCURRING ON MAY 15, 2012 IN RAPID CITY, SD.	) ORDER ADOPTING ) ENFORCEMENT PANEL ) RECOMMENDATION, TO ) PURSUE COLLECTION ACTION ) IF NECESSARY AND TO CLOSE ) DOCKET OC12-010
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On June 26, 2012 the South Dakota Public Utilities Commission received a complaint from Montana-Dakota Utilities Co. (herein "MDU") against Excavating Specialists of Rapid City, SD. The complaint alleges Excavating Specialists performed excavation without proper locates.

A copy of the complaint was sent to Excavating Specialists on July 2, 2012. Excavating Specialists responded to the Complaint on July 16, 2012. In its response Excavating Specialists acknowledged it excavated outside its ticket.

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 Excavating Specialists performed excavation without a valid ticket. Due to the length of time the company has been in business and its experience in the field the Panel did not believe the violation could have been unintentional. The Panel found the violation to be intentional.

The Panel found it proper to recommend a One Thousand Dollar (\$1,000) penalty due to the degree of danger when excavating around natural gas facilities. The Panel found it proper, however, to conditionally suspend Five Hundred Dollars (\$500) of the penalty because there have not been any prior complaints against Excavating Specialists.

The suspension conditions are as follows:

- (i) Excavating Specialists shall make payment of the **Five Hundred Dollar (\$500) unsuspended portion** of the penalty within thirty days of issuance of this Order.
- (ii) Excavating Specialists must not be found guilty of a One Call violation in the next 12 months.

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