

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT
FILED BY TM RURAL WATER DISTRICT
AGAINST MP NEXLEVEL, LLC
FOR AN INCIDENT OCCURRING ON
JULY 26, 2012 IN SALEM, SOUTH DAKOTA

) ORDER ADOPTING
) ENFORCEMENT PANEL
) RECOMMENDATION, TO
) PURSUE COLLECTION ACTION
) IF NECESSARY AND TO CLOSE
) DOCKET
)
) OC12-014

On August 2, 2012 the South Dakota Public Utilities Commission received a complaint from TM Rural Water District (herein "TM") of Parker, SD against MP Nexlevel, LLC (herein "Nexlevel") of Maple Lake, MN. The complaint alleges Nexlevel performed excavation outside the ticket area.

A copy of the complaint was sent to Nexlevel on August 3, 2012. Nexlevel responded to the Complaint on August 20, 2012. In its response Nexlevel acknowledged its error and stated the steps taken to prevent a violation in the future.

On August 29, 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 57-7A-5 occurred. Specifically, the Panel found Nexlevel performed excavation outside the ticket area. Based on evidence in the Complaint, the Panel found the violation to be intentional.

The Panel found it proper to recommend a One Thousand Dollar (\$1,000) penalty but recommended Five Hundred Dollars (\$500) of the penalty is conditionally suspended because there have not been any prior complaints against Nexlevel and the company took steps to prevent future violations.

The recommended suspension conditions are as follows:

- (i) Nexlevel shall make payment of the **Five Hundred Dollar (\$500) unsuspending portion** of the penalty within thirty days of issuance of the this Order.
- (ii) Nexlevel 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 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