

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

**IN THE MATTER OF THE COMPLAINT
FILED BY CENTURYLINK, RAPID CITY,
SOUTH DAKOTA, AGAINST
PROFESSIONAL EXCAVATING, RAPID
CITY, SOUTH DAKOTA, FOR AN
INCIDENT OCCURRING ON APRIL 5,
2013, AT 406 EAST NORTH STREET
RAPID CITY, SOUTH DAKOTA**

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OC13-004

**ORDER ADOPTING
ENFORCEMENT PANEL
RECOMMENDATION TO
THE SD ONE CALL BOARD
AND TO PURSUE
COLLECTION ACTION IF
NECESSARY**

On April 17, 2013, the South Dakota Public Utilities Commission ("Commission") received a complaint from CenturyLink against Professional Excavating of Rapid City, South Dakota. The complaint alleges that on or about April 5, 2013, Professional Excavating performed excavation directly above located facilities using a track hoe, resulting in damage to two cables. Professional Excavating responded, contending that the facilities were not accurately marked.

The Panel found probable cause to believe a violation of SDCL 49-7A-5 occurred. Specifically, the Panel found Professional Excavating failed to protect and preserve the locate markings. The Panel did not find the violation to be intentional.

The Panel found it proper to assess a Five Hundred Dollar (\$500) penalty with Five Hundred Dollars (\$500) suspended of the penalty on certain conditions.

The recommended suspension conditions are as follows:

- 1) Professional Excavating must not be found to have committed a violation of SDCL 49-7A or ARSD 20:25 within the next twelve months.
- 2) Professional Excavating shall attend a spring 2014 South Dakota One Call excavator meeting.
- 3) Professional Excavating shall conduct an in-house safety meeting for its employees to review the One Call laws. The meeting shall be held within 30 days of the final One Call Order. Documentation shall include the printed and signed names of meeting participants, details of the material discussed, and the date and length of the meeting. Documentation shall be submitted to the Executive Director of South Dakota One Call within that 30-day period.

If any of the conditions are not met, the entire Five Hundred Dollar Penalty (\$500) will be immediately due and owing.

On June 24, 2013, the One Call Board received a request for hearing from Professional Excavating. On July 18, 2013, the One Call Board received an email from Professional Excavating stating that they wished to withdraw the request for a hearing.

At its regularly scheduled meeting on August 7, 2013, the South Dakota One Call Board, pursuant to 49-7A-27, reviewed the Panel's procedure and approved its findings.

It is therefore:

ORDERED, that the South Dakota One Call Board adopts the recommendations of the Panel as a final resolution of this complaint. The Panel's findings are attached hereto and shall be considered fully incorporated herein; it is further

ORDERED, that if the penalty is not paid, the Board shall pursue any rights it has under the law regarding collection; it is further

The South Dakota One-Call Notification Board has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-7A, specifically SDCL 49-7A-5, 49-7A-18, 49-7A-20, 49-7A-22, and 49-7A-26.

CERTIFICATE OF SERVICE

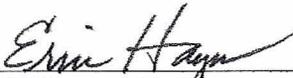
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile by first class mail, or by other electronic means.


Larry L. Janes, Executive Director

Date August 14, 2013

BY ORDER OF THE SD ONE-CALL BOARD:

Dated at Spear Falls, South Dakota
This 13th day of August, 2013


Erin Hayes, Chairman