

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT)	ENFORCEMENT PANEL
FILED BY CENTURYLINK, RAPID CITY,)	RECOMMENDATION TO
SOUTH DAKOTA, AGAINST)	THE SD ONE CALL BOARD
PROFESSIONAL EXCAVATING, RAPID)	
CITY, SOUTH DAKOTA, FOR AN)	OC13-004
INCIDENT OCCURRING ON APRIL 5,)	
2013, AT 406 EAST NORTH STREET)	
RAPID CITY, SOUTH DAKOTA)	

On April 17, 2013, the South Dakota Public Utilities Commission received a complaint from CenturyLink, Rapid City, South Dakota 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.

A copy of the complaint was sent to Professional Excavating on April 18, 2013. Professional Excavating responded to the Complaint on April 10, 2013. In its response Professional Excavating disputes the incident occurred. Professional Excavating claims the lines were not marked accurately.

On April 30, 2013, 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 Professional Excavating failed to properly protect and preserve the markings. The Panel did not find the violation to be intentional.

The Panel found it proper to assess a Five Hundred Dollars (\$500) penalty for this first time offense. Based, however, on Professional Excavating's safe excavation history, the Panel found it proper to conditionally suspend the Five Hundred Dollar (\$500) penalty under the following conditions:

- (i) Professional Excavating shall attend an excavating seminar in the spring of 2014.
- (ii) 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.
- (iii) Professional Excavating must not be found guilty of a One Call violation within the next 12 months.

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

The Panel recommends the South Dakota One Call Board accept its findings and recommendations herein. If either party to this Complaint disagrees or objects to the recommendations or findings herein, a hearing may be requested. To request a hearing a party must reply within twenty days from the date of service of this notice. Failure to request a hearing is considered acceptance of the recommendations and findings herein.

The South Dakota One-Call Notification Board has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-7A and ARSD 20:25.

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 June 5, 2013

**REQUEST FOR A HEARING
COMPLAINT OC13-004**

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC13-004 AND
REQUEST A HEARING.**

Signature – Professional Excavating

Date

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC13-004 AND
REQUEST A HEARING.**

Signature – CenturyLink

Date

**YOUR REQUEST FOR A HEARING MUST BE SENT TO ALL OTHER
PARTIES INCLUDING:**

**SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
C/O SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
500 E. CAPITOL AVE.
PIERRE, SD 57501-5070**

**Failure to request a hearing will result in acceptance of the Enforcement Panel's
Recommendation by the South Dakota One Call Board. The Board will then
Order the Recommendation as the final disposition of this Complaint.**