

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT) FILED BY MONTANA-DAKOTA) UTILITIES CO., RAPID CITY, SOUTH) DAKOTA, AGAINST HIGHMARK, INC.,) BLACK HAWK, SOUTH DAKOTA, FOR) AN INCIDENT OCCURRING ON APRIL) 25, 2013, AT THE INTERSECTION OF) STURGIS RD. AND NICHE RD,) SUMMERSET, SOUTH DAKOTA)	ENFORCEMENT PANEL RECOMMENDATION TO THE SD ONE CALL BOARD OC13-005
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On May 6, 2013, the South Dakota Public Utilities Commission received a complaint from Montana-Dakota Utilities Co., Rapid City, South Dakota against Highmark, Inc. of Black Hawk, South Dakota. The complaint alleges that on or about April 25, 2013, Highmark, Inc. directionally drilled into a gas line without potholing, resulting in damage to a 45 psi gas line.

A copy of the complaint was sent to Highmark, Inc. on May 9, 2013. Highmark, Inc. responded to the Complaint on May 23, 2013. In its response Highmark, Inc. stated it located depth on each side of the road. It admitted fault and accepts responsibility for all costs.

On June 5, 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-8 occurred. Specifically, the Panel found Highmark, Inc. failed to maintain horizontal clearance of 18 inches between the cutting edge of equipment and a marked underground facility. The Panel found the violation to be intentional.

The Panel found it proper to assess a Seven Hundred Fifty Dollars (\$750) penalty for this first time offense. Based, however, on Highmark, Inc.'s safe excavation history, the Panel found it proper to conditionally suspend Five Hundred Dollars (\$500) of the penalty under the following conditions:

- (i) Highmark, Inc. shall attend an excavating seminar in the spring of 2014.
- (ii) Highmark, Inc. 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 Seven Hundred Fifty Dollars (\$750)) 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 OC13-005**

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC13-005 AND
REQUEST A HEARING.**

Signature – Highmark, Inc.

Date

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC13-005 AND
REQUEST A HEARING.**

Signature – Montana-Dakota Utilities Co.

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.**