

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT)	ENFORCEMENT PANEL
FILED BY MONTANA-DAKOTA)	RECOMMENDATION TO
UTILITIES CO., RAPID CITY, SOUTH)	THE SD ONE CALL BOARD
DAKOTA, AGAINST HIGHMARK, INC.,)	
BLACK HAWK, SOUTH DAKOTA, FOR)	OC13-006
AN INCIDENT OCCURRING ON MAY 6,)	
2013, IN PIEDMONT, SOUTH DAKOTA)	

On May 17, 2013, the South Dakota Public Utilities Commission received a complaint from the Montana-Dakota Utilities (MDU) against Highmark, Inc., Black Hawk, South Dakota. The complaint alleges that on or about May 16, 2013, Highmark, Inc. performed excavation without valid locates, resulting in damage to a natural gas service line.

A copy of the complaint was sent to Highmark, Inc. on May 17, 2013. On May 5, 2013, the One Call Board received a response from the owner of Highmark, Inc., Dale Schuelke, stating that Dale Schuelke, personally, was responsible for the excavation, which was not done in the course of his business. Mr. Schuelke did not contest the alleged violations in the complaint. On June 5, 2013, MDU filed a request to amend the complaint naming Dale Schuelke, individually, as the defendant. Mr. Schuelke did not object to this amendment.

On July 2, 2013, pursuant to SDCL 49-7A-22 a panel of five One Call Board members (herein "Panel") convened. The Panel met to determine whether the amendment should be approved and whether probable cause exists to believe the violation occurred as described in the complaint.

The panel voted unanimously to approve the amendment naming Dale Schuelke as the defendant and striking Highmark, Inc. from 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 Dale Schuelke excavated directly above located facilities using a mini-excavator, rather than hand tools or noninvasive methods, in violation of SDCL 49-7A-8. The Panel found the violation to be intentional.

The Panel found it proper to assess a Five Hundred Dollars (\$500) penalty for this first time offense. The Panel found it proper to conditionally suspend Two Hundred Fifty Dollars (\$250) of the penalty under the following conditions:

- (i) Dale Schuelke shall make payment of the **Two Hundred Fifty Dollar (\$500) unsuspended portion** of the penalty within thirty days of issuance of the final SD One Call Board Order.

- (ii) Dale Schuelke shall attend an excavating seminar in the spring of 2014.
- (iii) Dale Schuelke shall not be found in violation of any One Call statute or rule within twelve months of the issuance of the final Order.

If any of the conditions are not met, the entire Five Hundred Dollar Penalty (\$500) 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 _____