

Safe digging is no accident. Always call 811 before digging.



**Know what's below.  
Call before you dig.**



August 30, 2013

Mr. Kevin Ancell  
Centurylink  
125 S. Dakota Ave.  
Sioux Falls, SD 57104

Ms. Melissa Baruth  
NorthWestern Energy  
600 Market St.  
Huron, SD 57350

Enclosed is a corrected copy of the South Dakota One Call Enforcement Panel minutes which were mailed on August 29, 2013. A typo was discovered in that document after it was mailed. I apologize for any inconvenience caused.

A handwritten signature in black ink, appearing to read "Larry L. Janes".

Larry L. Janes  
Executive Director  
South Dakota One Call  
(603) 339-0529  
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## MINUTES

**South Dakota One Call Notification Board  
Enforcement Panel Conference Call  
Thursday, August 29, 2013  
1:30 PM Central Time, 12:30 PM Mountain Time**

### **Roll Call:**

Enforcement Panel Members in attendance: Erin Hayes; Fay Jandreau; Kevin Kouba; Kurt Pfeifle; Todd Chambers. Also attending: Legal Counsel, Kristen Edwards; Executive Director, Larry Janes.

### **In The Matter Before The South Dakota One Call Notification Board Enforcement Panel**

**OC13-013 – In the Matter of the Complaint filed by MidAmerican Energy Company (MidAmerican), Urbandale, Iowa against Sterling Lone Star (Sterling), Lincoln, Nebraska, for an incident occurring on April 08, 2013 at 409 Linden St., Valley Springs, South Dakota.**

On July 10, 2013, MidAmerican filed a complaint against Sterling, alleging that Sterling damaged a 48 psi gas line when digging with a post hole digger without a locate request. Sterling responded on July 30, 2013 by stating that this was an unintentional action and did not follow company protocol. Sterling also stated that the contractor should have rescheduled to obtain locates, and that it won't happen again. There have been no previous South Dakota One Call Complaints filed against Sterling.

**Today, shall the Enforcement Panel of the South Dakota One Call Notification Board find that there is probable cause that Sterling Lone Star violated any statute or rule under the jurisdiction of the Board, and if so shall a civil penalty be assessed?**

### **Probable Cause discussion and motion:**

Larry Janes mentioned that the complaint was filed 93 days after the incident occurred. 49-7A-21 states in part that a complaint alleging a violation of any statute, except § 49-7A-12, or alleging a violation of any rule of the Statewide One-Call Notification Board shall be brought not later than ninety days after the discovery of the alleged violation. Kurt Pfeifle stated that based on this law, the Panel could not consider the complaint. Fay Jandreau agreed. Kristen Edwards was asked for a legal interpretation. She stated the complaint was filed after 90 days, therefore, it was filed too late to be considered. Kurt Pfeifle made a motion to dismiss OC13-013 on the basis that the complaint was not filed within 90 days of discovery of the alleged violation. Todd Chambers seconded the motion. **Motion carried unanimously upon a roll call vote.**

**OC13-014 -- In the Matter of the Complaint filed by MidAmerican Energy Company (MidAmerican), Urbandale, Iowa against Select Builders (Select), Harrisburg, South Dakota for an incident occurring on April 18, 2013 at 738 E. El Dorado, Sioux Falls, SD.**

On July 10, 2013, MidAmerican filed a complaint against Select, alleging that Select damaged a 48 psi gas line while installing a mailbox with an auger. There were no current locates. Select responded on July 22, 2013 by stating that they did not dispute the allegation and that they always call 811 before digging. Select went on to apologize and state they will do everything in their power to never have this happen again. There have been no previous South Dakota One Call Complaints filed against Select.

**Today, shall the Enforcement Panel of the South Dakota One Call Notification Board find that there is probable cause that Select Builders violated any statute or rule under the jurisdiction of the Board, and if so shall a civil penalty be assessed?**

**Probable Cause discussion and motion:**

Kurt Pfeifle mentioned that Select admitted guilt, so there was probable cause that a violation had occurred. Erin Hayes agreed. Kristen Edwards was asked for an interpretation for 49-7A-10. She stated this law refers to liability in a civil suit case. Fay Jandreau stated that he thought we should omit 49-7A-10 from consideration. He then went on to make a motion that there was probable cause that Select Builders violated 49-7A-5. Erin Hayes seconded the motion. **Motion carried unanimously upon a roll call vote.**

**Intentional or unintentional discussion and motion:**

Erin Hayes stated that Select has been in business for a number of years and should understand One Call laws. Kurt Pfeifle wasn't sure this was violation was intentional. Fay Jandreau made a motion stating this was an unintentional violation. Kurt Pfeifle seconded the motion. **Motion carried unanimously upon a roll call vote.**

**Penalty Assessment discussion and motion:**

The executive director stated that per SDCL 49-7A-26 the four factors which must be taken into consideration in determining the amount of penalty are:

1. The amount of damage, degree of threat to public safety, and inconvenience caused;
2. The respondent's plans and procedures to insure future compliance with statute and rules;
3. Any history of previous violations;
4. Other matters as justice requires.

Fay Jandreau made a motion to assess a penalty of \$500 with \$250 suspended, if the following conditions are met: Select must not be found guilty of a SD One Call violation within 12 months of the Board Order, the penalty payment must be made within 30 days of the Board Order, a representative must attend a Spring Excavator meeting in 2014, and Select must conduct an in-house safety meeting discussing SD One Call laws within 30 days of the Board Order. Detail of the discussion material, date, and length of the meeting, along with the printed and signed names of the attendees will be submitted to the Executive Director of South Dakota One Call within 30 days of the Board Order. Failure to meet any of the requirements will result in the suspended penalty amount immediately due and owing. Todd Chambers seconded the motion. **Motion carried unanimously upon a roll call vote.**

**OC13-015 -- In the Matter of the Complaint filed by NorthWestern Energy (NorthWestern), Huron, South Dakota against CenturyLink, Sioux Falls, South Dakota, for an incident occurring on July 17, 2013 at 1210 S. Ohlman St., Mitchell, South Dakota.**

On July 23, 2013 NorthWestern filed a complaint against CenturyLink, alleging that CenturyLink did not locate within the time required by South Dakota One Call law. CenturyLink responded to the complaint on August 12, 2013 by admitting that the ticket was not met on time, but that it was due to a medical emergency. It goes on to state that action has been undertaken to ensure that its contractor improve performance in South Dakota. Similar complaints were filed against CenturyLink on June 28, 2013 and on July 23, 2013.

**Today, shall the Enforcement Panel of the South Dakota One Call Notification Board find that there is probable cause that CenturyLink violated any statute or rule under the jurisdiction of the Board, and if so shall a civil penalty be assessed?**

**Probable Cause discussion and motion:**

Kurt Pfeifle asked Legal Counsel if OC13-015, OC13-016, and OC13-017 could be considered at the same time, since they were essentially the same complaints. Kristen Edwards stated that this was acceptable. After some discussion, Fay Jandreau stated that South Dakota law does not recognize an extension process. Kurt Pfeifle made a motion stating that there was probable cause that CenturyLink violated 49-7A-8. Fay Jandreau seconded the motion. **Motion carried unanimously upon a roll call vote.**

**Intentional or unintentional discussion and motion:**

Kurt Pfeifle stated that NorthWestern said that these were intentional violations, and CenturyLink disputed that. Fay Jandreau said that he felt these were intentional. There have been multiple complaints, they're documented, and similar. He went on to say they appear to be unintentional, but the Panel should not require a Dr. slip to prove illness. Previous history outweighs CenturyLink's response. Fay Jandreau made a motion stating these were intentional violations. Kevin Kouba seconded. **Motion carried unanimously upon a roll call vote.**

**Penalty Assessment discussion and motion:**

Kristen Edwards was asked the range that penalties could be assessed for intentional violations. She stated that \$5,000 was the maximum for a first time, intentional violation and \$1,000 was the maximum for a first time, unintentional violation. Kurt Pfeifle suggested the Panel consider \$2,500 penalties with \$1,000 suspended for each of the three complaints. Erin stated this was the same issue in OC13-010. Fay Jandreau thought the amount seemed strong, but was concerned about an automated system generating statements that the excavator had agreed to an extension of the 48 hour requirement to locate, when an extension is not allowed in our law. Kurt Pfeifle thought the penalties should not be graduated in ever increasing increments, because the 3 complaints came in on the same day. It didn't allow for CenturyLink to adjust its business practices. Fay Jandreau made a motion that each complaint be assessed a \$2,000 penalty, with \$1,000 suspended, along with the following conditions: CenturyLink must not be found guilty of a SD One Call violation within 12 months of the Board Order, the penalty payment must be made within 30 days of the Board Order, a representative must attend a Spring Excavator meeting in 2014, and CenturyLink must conduct an in-house safety meeting with employees and the locating subcontractor to discuss SD One Call laws within 30 days of the Board Order. Detail of

the discussion material, date, and length of the meeting, along with the printed and signed names of the attendees will be submitted to the Executive Director of South Dakota One Call within 30 days of the Board Order. Failure to meet any of the requirements will result in the suspended penalty amount immediately due and owing. Kurt Pfeifle seconded the motion. Motion carried unanimously upon a roll call vote.

**OC13-016 -- In the Matter of the Complaint filed by NorthWestern Energy (NorthWestern), Huron, South Dakota against CenturyLink, Sioux Falls, South Dakota , for an incident occurring on July 17, 2013 at 1123, S. Anderson St., Mitchell, South Dakota for Locate Ticket 131960200.**

On July 23, 2013 NorthWestern filed a complaint against CenturyLink, alleging that CenturyLink did not locate within the time required by South Dakota One Call law. CenturyLink responded to the complaint on August 12, 2013 by admitting that the ticket was not met on time, but that it was due to a medical emergency. It goes on to state that action has been undertaken to ensure that its contractor improve performance in South Dakota. A similar complaint was filed against CenturyLink on June 28, 2013 and July 23, 2013.

**Today, shall the Enforcement Panel of the South Dakota One Call Notification Board find that there is probable cause that CenturyLink violated any statute or rule under the jurisdiction of the Board, and if so shall a civil penalty be assessed?**

(See OC13-015)

**OC13-017 -- In the Matter of the Complaint filed by NorthWestern Energy (NorthWestern), Huron, South Dakota against CenturyLink, Sioux Falls, South Dakota , for an incident occurring on July 17, 2013, at 1125 S. Anderson St., Mitchell, S.D., for Locate Ticket 131960205.**

On July 23, 2013 NorthWestern filed a complaint against CenturyLink, alleging that CenturyLink did not locate within the time required by South Dakota One Call law. CenturyLink responded to the complaint on August 12, 2013 by admitting that the ticket was not met on time, but that it was due to a medical emergency. It goes on to state that action has been undertaken to ensure that its contractor improve performance in South Dakota. Similar complaints were filed against CenturyLink on June 28, 2013 and on July 23, 2013.

**Today, shall the Enforcement Panel of the South Dakota One Call Notification Board find that there is probable cause that CenturyLink violated any statute or rule under the jurisdiction of the Board, and if so shall a civil penalty be assessed?**

(See OC13-015)

**OC13-018 -- In the Matter of the Complaint filed by NorthWestern Energy (NorthWestern), Huron, South Dakota against Cleary Building Corp. (Cleary), Dell Rapids, South Dakota , for an incident occurring on July, 10, 2013 at 601 Oak St., Springfield, SD.**

On July, 26, 2013, NorthWestern Energy filed a complaint against Cleary Building Corp., alleging that an Emergency locate request was made to install a pole building, which does not meet the criteria for an Emergency ticket in South Dakota. Cleary did not respond to the Complaint by the deadline of August 16, 2013, but did so on August 23, 2013 by stating that their intention was not to violate the law by calling in an Emergency locate, but did so because the start date on the job unexpectedly changed. They did not want anyone to get hurt by not having a locate completed.

**Today, shall the Enforcement Panel of the South Dakota One Call Notification Board find that there is probable cause that Cleary Building Corp. violated any statute or rule under the jurisdiction of the Board, and if so shall a civil penalty be assessed?**

**Probable Cause discussion and motion:**

Larry Janes stated that it is not the job of customer service reps in the One Call Center to interpret SD law. Todd Chambers stated that the reps are to place what is explained to them on locate tickets. Kristen Edwards was asked the difference between 49-7A-5 and Administrative Rule 20:25:03:04.03. She explained that 49-7A-5 puts emergency into law and that the Administrative Rule explains it. Kurt Pfeifle made a motion stating that probable cause exists that Cleary violated SDCL 49-7A-5 and Administrative Rule 20:25:03:04.03. Erin Hayes seconded the motion. Todd Chambers asked if these were separate offenses, and Kristen Edwards stated they would be considered one and the same. **Motion carried unanimously upon a roll call vote.**

**Intentional or unintentional discussion and motion:**

Kurt Pfeifle mentioned that NorthWestern stated in the complaint that this was an intentional violation. He did not agree. Erin Hayes stated that Cleary knew of a schedule change, then went ahead and requested an Emergency locate. Kevin Kouba stated he agreed with their concern over safety, but this clearly was not an emergency. It was only a scheduling change. Todd Chambers stated Cleary moved the date, but also understood not wanting to injure their people. Fay Jandreau said the risk was only after Cleary decided to break SD law. Erin Hayes moved that this was an intentional violation of 49-7A-5. Todd Chambers seconded the motion. **Motion carried unanimously upon a roll call vote.**

**Penalty Assessment discussion and motion:**

Fay Jandreau asked if there had been previous violations filed against Cleary Building Corp. Larry Janes stated that there have not been any previous filings against Cleary. Kevin Kouba asked about previous penalty amounts assessed for first violations. After reviewing complaint history over the past two years, Kevin Kouba made a motion to assess a \$750 penalty with \$500 suspended, if the following conditions are met: Cleary must not be found guilty of a SD One Call violation within 12 months of the Board Order, the penalty payment must be made within 30 days of the Board Order, a representative must attend a Spring Excavator meeting in 2014. Cleary must conduct an in-house safety meeting discussing SD One Call laws within 30 days of the Board Order. Detail of the discussion material, date, and length of the meeting, along with the printed and signed names of the attendees will be submitted to the Executive Director of South Dakota One Call within 30 days of the Board Order. Failure to meet any of the requirements will result in the suspended penalty amount immediately due and owing. Erin Hayes seconded the motion. **Motion carried unanimously upon a Roll Call vote.**

There being no further business Larry Janes asked for a motion to adjourn. Erin Hayes so moved. Kevin Kouba seconded the motion. **Motion carried unanimously upon a Roll Call vote. Meeting Adjourned.**

Minutes of this meeting were prepared by Larry Janes, Executive Director, South Dakota One Call Notification Board.

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