

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 HEAVY
CONSTRUCTORS, INC., RAPID CITY,
SOUTH DAKOTA, FOR AN INCIDENT
OCCURRING ON OCTOBER 23, 2013, AT
2125 JACKSON BLVD., RAPID CITY, S.D.**

OC13-030

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

On November 19, 2013, the South Dakota Public Utilities Commission received a complaint from Montana-Dakota Utilities Co., Rapid City, South Dakota against Heavy Constructors, Inc. of Rapid City, South Dakota. The complaint alleges that on or about October 23, 2013, Heavy Constructors, Inc. (herein "Heavy") dug without a locate ticket. A copy of the complaint was sent to Heavy on November 20, 2013. A response from Heavy was received on December 6, 2013.

On December 18, 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 determined that probable cause did exist to believe a violation of SDCL 49-7A-5 occurred and found that the violation was intentional.

The Panel found it proper to assess a penalty of \$750.00 with \$500 suspended on certain conditions as listed below.

The recommended suspension conditions are as follows:

- (i) Heavy Constructors, Inc. shall make payment of the \$250 unsuspended portion of the penalty within 30 days of issuance of the final SD One Call Board Order. This condition has been satisfied.
- (ii) Heavy Constructors, Inc. shall attend an excavating seminar in the spring of 2014.
- (iii) Heavy Constructors, 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. This condition has been satisfied.
- (iv) Heavy Constructors, Inc. must not be found to have committed another violation of a One Call rule or regulation within the 12 months of the SD One Call Board Order.

If any of the conditions are not met, the entire Seven Hundred Fifty Dollar Penalty (\$750.00) will be immediately due and owing.

At its regularly scheduled meeting on February 19, 2014, 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 March 3, 2014

BY ORDER OF THE SD ONE-CALL BOARD:

Dated at Sion Falls, South Dakota
This 21 day of February, 2014


Dan Kaiser, Vice Chairman