

MINUTES

South Dakota One Call Notification Board Enforcement Panel Conference Call

Location: Midcontinent Communications

3901 N Louise Ave, Sioux Falls SD

Tuesday, January 27, 2015

1:00 PM Central Time, 12:00 PM Mountain Time

Roll Call

Enforcement Panel Members in attendance: Erin Hayes; Dan Kaiser; Kurt Pfeifle; Doug Larson; Fay Jandreau. Also attending: Legal Counsel, Kristen Edwards; Executive Director, Larry Janes.

Others in attendance: Jason Anderson, City of Vermillion; Randy Isaacson, City of Vermillion; Paul Brunick, City of Vermillion.

The Enforcement Panel of the South Dakota One Call Board met to consider the following South Dakota One Call Complaint:

OC14-033 - In the Matter of the Complaint Filed by AGK Electric (AGK), Vermillion South Dakota, Against City of Vermillion (Vermillion), Vermillion, South Dakota for an Incident occurring on October 10, 2014 at 612 N Norbeck St., Vermillion, S.D.

On December 29, 2014 AGK filed a complaint against Vermillion, alleging that Vermillion did not mark a sewer line, which resulted in sewer damage.

Vermillion responded on January 7, 2015 and did not dispute the claim but referred to Attorney General Opinion # 08-07 and to Administrative Rule 20:25:03:01.

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

PROBABLE CAUSE DISCUSSION: Kurt Pfeifle made a motion that there was probable cause that a violation of 49-7A-8 occurred. Fay Jandreau seconded the motion. Fay stated that this was a straightforward issue to consider. The locate was not performed. Kurt Pfeifle agreed. The facility was not locatable, however, this is not a viable excuse. Operators must locate no matter how old the facility is. Doug Larson said his conclusion is the same. Dan Kaiser stated that he agreed and had no further comments. **Motion carried unanimously on a roll call vote.**

DISCUSSION OF INTENT: Fay Jandreau made a motion stating that this was an unintentional violation. Dan Kaiser seconded the motion. He went on to say that Vermillion invested effort into South Dakota One Call and they believed they were following the law correctly. This was a case of misinterpretation of the law. Dan also thought Vermillion might have been doing a little back tracking by investigating Attorney General Opinion 08-07 to avoid not receiving the payment from AGK. All operators are required to mark their services. Kurt Pfeifle thought Vermillion was hiding behind the ambiguity of the

law. He mentioned that AGK stated in the Complaint that Vermillion assumes excavators know that buildings have sewers. Kurt went on to state that it's incumbent upon the Vermillion to locate its water and sewer lines. **Motion carried unanimously on a roll call vote.**

PENALTY DISCUSSION: Kurt Pfeifle asked Kristen Edwards to state the penalty range for an unintentional violation. Kristen stated that \$1,000 is the maximum amount. Larry Janes was asked to provide penalty assessments based on previous unintentional violations. After hearing the range, Dan Kaiser said that to assess a penalty of \$1,000 with \$250 suspended might be too high in this case. Vermillion is an advocate of South Dakota One Call and the Spring Damage Prevention Meetings. Kurt Pfeifle agreed. Fay Jandreau suggested the Panel should not assess penalties based on support of One Call in the past. Dan Kaiser agreed and then made a motion to assess a \$1,000 penalty with \$850 suspended with the following requirements: Vermillion must not be found guilty of a One Call violation within 12 months of the final Board Order, the penalty payment must be made within 30 days of the final Board Order, Vermillion must attend a Damage Prevention meeting in 2015, and Vermillion must conduct an in-house safety meeting to discuss South Dakota One Call laws. Detail of the discussion material, date and length of the meeting, along with the printed and signed names of attendees will be submitted to the Executive Director of South Dakota One Call within 30 days of the final Board Order. If any of these conditions are not met, the entire amount will be immediately due and owing. Erin Hayes seconded the motion. **Motion carried unanimously upon a roll call vote.**

Kurt Pfeifle then stated for clarification that a violation occurred based on an understanding of the Attorney General Opinion which is not the law of the land. It is only his Opinion. Fay Jandreau mentioned that Vermillion is an operator. Per the Opinion, water and sewer operators must locate facilities. Kristen stated that we must base our determination on that Opinion.

There being no further business, Larry Janes asked for a motion to adjourn. Fay Jandreau made the motion. Kurt Pfeifle seconded. **Motion carried unanimously upon a roll call vote.**

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

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