

**BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD**

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IN THE MATTER OF THE COMPLAINT  
FILED BY MONTANA-DAKOTA UTILITIES )  
CO., RAPID CITY, SOUTH DAKOTA, )  
AGAINST NELSEN CONSTRUCTION, RAPID )  
CITY, SOUTH DAKOTA, FOR AN INCIDENT )  
OCCURRING ON JULY 21, 2014, )  
AT 3249 MARVEL MT. RD., RAPID CITY, )  
S.D. )

ENFORCEMENT PANEL  
RECOMMENDATION TO  
THE SD ONE CALL BOARD

OC15-005

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On January 22, 2015, the South Dakota Public Utilities Commission received a complaint from Nebraska Public Power District of Chadron, Nebraska against Doug O'Bryan Contracting, Inc. (Respondent) of Martin, South Dakota. The complaint alleges that on or about October 31, 2014, Respondent engaged in excavation using an expired a locate ticket.

A copy of the complaint was sent to Respondent on January 26, 2015. Respondent filed an answer to the Complaint on February 17, 2015. In its answer, Respondent disputes the violation.

On March 27, 2015, 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 and ARSD 20:25:03:05.01 occurred. Specifically, the Panel found Respondent preformed excavation without a valid locate ticket, resulting in damage to a utility line operated by Nebraska Public Power District. The Panel did find the violation to be intentional.

The Panel found it proper to assess a \$750.00 penalty for this offense. The Panel found it proper to suspend \$500.00 of the penalty under the following condition:

- (i) Respondent shall make payment of the **\$250.00 unsuspended portion** of the penalty within 30 days of issuance of the final SD One Call Board Order.
- (ii) Respondent shall attend a damage prevention seminar in the spring of 2016.
- (iii) Respondent 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.
- (iv) Respondent 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 \$750.00 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 4-9-2015

**REQUEST FOR A HEARING  
COMPLAINT OC15-005**

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC15-005 AND  
REQUEST A HEARING.**

\_\_\_\_\_  
**Signature – Doug O'Bryan Contracting, Inc.**

\_\_\_\_\_  
**Date**

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC15-005 AND  
REQUEST A HEARING.**

\_\_\_\_\_  
**Signature – Nebraska Public Power District**

\_\_\_\_\_  
**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.**