

MINUTES

South Dakota One Call Notification Board Enforcement Panel Conference Call

Location: Midcontinent Communications
3901 N Louise Ave, Sioux Falls SD

Tuesday, July 28, 2015 - 2:00 PM Central Time, 1:00 PM Mountain Time

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

Roll Call:

Enforcement Panel Members in attendance: Dan Kaiser; John Ward; Fay Jandreau; Doug Larson; Erin Hayes. Also attending: Adam de Heuck, Legal Counsel; Executive Director, Larry Janes.

Other attendees:

Craig Fergen, NorthWestern Energy; Melissa Baruth, NorthWestern Energy; Blaine Weipperp, Traffic Solutions, Inc.; Lonnie Heibult, Traffic Solutions, Inc.

Order of Business:

Larry Janes provided a brief description of the Enforcement Panel process. This is a legal proceeding and that no comments by any of the parties may be taken during this call. A probable cause determination will be made based only on the written documentation received from the parties in the complaints. All parties will be given the opportunity to request a hearing before the full South Dakota One Call Notification Board, if there is disagreement with the recommendation of the Panel. If a hearing is requested, each party must be represented by legal counsel at the hearing. If a hearing is not requested, the Enforcement Panel recommendation will be presented to the South Dakota One Call Board of Directors for acceptance at the next Board Meeting. A final Order will be mailed to each party.

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

OC15-008 - In the Matter of the Complaint Filed by NorthWestern Energy (NorthWestern), Mitchell, South Dakota, Against Traffic Solutions (Traffic), Harrisburg, South Dakota for an Incident occurring on May 8, 2015, ~300' east of South Rowley and East Spruce intersection, Mitchell, SD.

On Jun 15, 2015, NorthWestern filed a complaint against Traffic, alleging that Traffic failed to meet with Northwestern when working near a High Profile natural gas line.

Traffic responded to the Complaint on June 26, 2015 stating that they don't recall anyone calling to request a meet, and this was unintentional.

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

PROBABLE CAUSE DISCUSSION:

Dan Kaiser made a motion stating there is probable cause that Traffic Solutions, Inc. violated Administrative Rule 20:25:03:10.02. John Ward seconded the motion. Fay Jandreau questioned if the NorthWestern actually contacted Traffic Solutions. Dan Kaiser agreed. John Ward stated the Traffic did not deny they were contacted. He went on to state that he wished there would have been a note from Sam Wurtz with Traffic's reply. Fay Jandreau mentioned that NorthWestern should have talked to Barry Sutherland at Traffic, but did not state they did. Dan Kaiser said that it is the operator's obligation to contact the excavator. John Ward said that his experience is that when a high profile facility is in the area he always receives a call from the operator. Adam de Heuck stated that the law is poorly written. There being no further discussion a roll call vote was taken. Dan Kaiser, John Ward, and Doug Larson voted in favor of the motion. Fay Jandreau and Erin Hayes voted nay. **Motion carried upon the roll call vote.**

Discussion of Intent:

Dan Kaiser made a motion stating this was an unintentional violation of 20:25:03:10.02. Doug Larson seconded the motion. **Motion carried unanimously upon a roll call vote.**

Penalty Discussion:

Dan Kaiser stated that because the complaint and the response were so ambiguous he made a motion to impose a \$1,000 penalty, with \$1,000 suspended with the following requirements: Traffic 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, Traffic must attend a Damage Prevention meeting in 2016, and Traffic 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. Doug Larson seconded the motion. **Motion carried unanimously on a roll call vote.**

Being no further business Larry Janes asked for a motion to adjourn. Doug Larson made the motion to adjourn. Fay Jandreau seconded. **Motion carried unanimously upon a roll call vote.**

Please note: This is a legal proceeding and only the written information provided by the Complainant and the written response from the Defendant were considered per SDCL 49-7A-25. No comments from either party involved in the complaint were taken during this call.