MINUTES

South Dakota One Call Notification Board
Enforcement Panel Conference Call
Location: Midcontinent Communications
3901 N Louise Ave, Sioux Falls SD
Tuesday, November 24, 2015 - 3:00 PM Central Time, 2:00 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: John Ward; Fay Jandreau; Doug Larson; Erin Hayes; Todd Chambers. Also attending: Adam de Hueck, Legal Counsel; Executive Director, Larry Janes.

Other attendees:
Britt Samson; Jason Wright, First Rate Excavate; Kyle Schievelbein, Construction Signing Corporation

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 complaint. Each party 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.

OC15-009 - In the Matter of the Complaint Filed by Corey and Britt (Samson), Sioux Falls, South Dakota, Against First Rate Excavate (First Rate), Sioux Falls, South Dakota for an Incident occurring on September 10, 2015, at 904 E. 70th St., Sioux Falls, SD.

On October 02, 2015, Samson filed a complaint alleging that First Rate dug on their property and exposed the gas line where no locates had been done.

First Rate responded to the Complaint on October 27, 2015 stating that they do not intentionally damage or dig on private property.

First Rate has not had a complaint filed against it within the last twelve months.

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

PROBABLE CAUSE DISCUSSION: Fay Jandreau made a motion that there is probable cause that First Rate violated 49-7A-5. Todd Chambers seconded the motion. Fay Jandreau mentioned there was a question of the property line and where the located were performed. Todd Chambers mentioned that

First Rate admitted they went over the property line 8 – 12". John Ward stated that there was no locate ticket provided. Doug Larson mentioned there was no ticket on the Samson property. There was no further discussion. **Motion carried unanimously upon a roll call vote.**

DISCUSSION OF INTENT: Todd Chambers mad a motion that this was not an intentional violation. Erin Hayes seconded the motion. **Motion carried unanimously upon a roll call vote.**

Penalty Discussion: John Ward made a motion to assess a penalty amount of $750 with $500 suspended, with the following requirements: First Rate 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, First Rate must attend a Damage Prevention meeting in 2016, and First Rate 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. Doug Larson asked if this penalty amount was similar to other complaints. Larry Janes mentioned the penalty amounts from similar previous Enforcement Panel Recommendations. There was no further discussion. **Motion carried unanimously upon a roll call vote.**

OC15-010 – In the Matter of the Complaint Filed by Humboldt Municipal Gas Utility (Humboldt), Humboldt, South Dakota, Against Construction Signing Corporation (CSC), Sioux Falls, South Dakota, for an Incident Occurring on September 26, 2015 at 901 North Ford/Highway 19, Humboldt, South Dakota.

On October 22, 2015 Humboldt filed a complaint alleging that CSC damaged a 2" gas line when moving mailboxes without making locate requests.

CSC responded to the Notice of Complaint on November 23, 2015 by stating they did not have a locate for the area, and that it was a mistake. CSC went on to state that they prided themselves in safety and in the future will print all locate tickets and double check that they have locates before heading to a job site.

There has not been a complaint previously filed against CSC.

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

Probable Cause Discussion: Doug Larson made a motion stating there is probable cause that CSC violated 49-7A-5. John Ward seconded the motion. **Motion carried unanimously upon a roll call vote.**

Discussion of Intent: Erin Hayes stated that CSC's locate had expired, but they thought it was called in for the area. Todd Chambers mentioned the locate ticket mentioned delineators, not mail boxes. It was not clear on the locate ticket and may have just been overlooked. John Ward stated it comes down to management of locate tickets and knowing where they are. John Ward made a motion stating this was

not an intentional violation. Todd Chambers seconded. **Motion carried unanimously upon a roll call vote.**

Penalty Discussion: Doug Larson made a motion to assess a penalty of $500 with $250 suspended. Erin Hayes seconded the motion. Fay Jandreau mentioned there was a high profile facility on one of the locate tickets provided. Todd Chambers stated that it was for Northern Natural Gas, not Humboldt. Doug mentioned that according to the response, there was no locate ticket for this work area. Fay Jandreau asked about the factors to consider in 49-7A-26. Todd Chambers read through them. They are: 49-7A-26. Factors considered in determining amount of penalty. The amount of recommended penalty shall be determined by a majority vote of the panel. Factors to be considered in determining the amount of the penalty shall be: (1) The amount of damage, degree of threat to the 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 then suggested a penalty of $1,500 with $1,000 suspended should be considered. Adam de Hueck stated that $1,000 is the maximum penalty that can be assessed for a first time un-intentional violation. There was some discussion regarding whether to amend the motion or withdraw the motion. Doug Larson withdrew the motion. Fay Jandreau made a motion to assess a penalty amount of $1,000 with $500 suspended, with the following requirements: CSC 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, CSC must attend a Damage Prevention meeting in 2016, and CSC 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.

There being no further business, Larry Janes asked for a motion to adjourn. Fay Jandreau so moved. Doug Larson seconded. **Motion carried unanimously upon a roll call vote.**

Please note: During this is legal proceeding only the written documentation provided by the Complainant and the written response from the Defendant were considered per SDCL 49-7A-25. No comments from any parties involved in the complaints were taken during this call.