

MINUTES

South Dakota One Call Notification Board Enforcement Panel Conference Call

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

Tuesday, January 12, 2016 - 11:00 AM Central Time, 10:00 AM Mountain Time

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

Roll Call:

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

Other attendees:

There were no additional attendees at this meeting.

Order of Business:

Enforcement Panel process: This is a legal proceeding in which 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. If there is disagreement with the recommendation of the Panel, each party will be given the opportunity to request a hearing before the full South Dakota One Call Notification Board. 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, at which time any civil penalty payments due will be due within 30 days of the Board Order. All other requirements must be met within the specified timeframes stated within the Order.

OC15-011 - In the Matter of the Complaint Filed by Northern Natural Gas Company, Omaha Nebraska, Against Lee Feldhaus, Howard, South Dakota, for an Incident occurring on December 3, 2015 at SW ¼ of Sec 24, T 107 N, R 55 W, Winfred, South Dakota.

On December 8, 2015 Northern Natural Gas Company (NNG) filed a complaint alleging that Mr. Lee Feldhaus (Feldhaus) was tiling within 500 feet of a 3 inch diameter, 690 psi gas line without a locate ticket.

A Notice of Complaint was mailed via Priority Mail to Mr. Feldhaus on December 8, 2015 with a December 28, 2015 deadline to respond. US Post Office records indicate the letter was delivered on December 11, 2015 at 10:19 am. Mr. Feldhaus did not respond to the Complaint.

Today, shall the Enforcement Panel of the South Dakota One Call Notification Board find that there is probable cause that Feldhaus 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 a violation of 49-7A-5 occurred. Erin Hayes seconded the motion. Bleau LaFave stated there is an accusation, but no response from the defendant. He asked if the Panel normally makes a decision even when a response is not received. Dan Kaiser said that a no response is normally considered an admission of guilt. Bleau LaFave suggested that there is no proof, no pictures, no evidence provided, just an accusation. Erin Hayes said she thought this made sense. Adam de Hueck stated the complaint is pretty empty and that NNG should have provided more evidence. Fay Jandreau asked if the Complaint is considered a legal affidavit. Adam de Hueck said it is not an affidavit, but is an accusation. He reiterated that additional evidence could have been provided, but probable cause is a lower threshold than beyond reasonable doubt. Fay Jandreau then said there was no damage associated with this complaint. John Ward asked what the panel members thought it would take to make this a violation. Bleau LaFave pictures would have helped in making this decision. Erin Hayes stated that a precedent has been established and that Feldhaus did not respond at all. There being no further discussion, **Motion carried unanimously on a Roll Call Vote.**

Discussion of Intent:

Dan Kaiser made a motion stating that this was not an intentional violation. Bleau LaFave seconded. **Motion carried unanimously on a Roll Call Vote.**

Penalty Discussion:

Erin Hayes stated there have been other instances in which the defendant did not respond in a high profile facility situation. Fay Jandreau made a motion to assess a \$1,000 penalty and suspend \$900 due to a lack of clarity of the violation, however the excavator needs to learn the process of contacting the 811 Center before digging. He went on to state that the motion includes the following requirements: Feldhaus 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, Feldhaus must attend a Damage Prevention meeting in 2016, and Feldhaus 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. Dan Kaiser seconded the motion. **Motion carried unanimously on a roll call vote.**

OC15-012 – In the Matter of the Complaint Filed by Northern Natural Gas Company, Omaha Nebraska, Against Renkly Farms, Inc, Lake Benton, Minnesota, for an incident occurring on November 23, 2015 at 4 miles SW of Arlington, Arlington, South Dakota.

On December 8, 2015 Northern Natural Gas Company (NNG) filed a complaint alleging that Renkly Farms, Inc. (Renkly) was tiling in close proximity to a 6 inch diameter, 715 psi gas line without a one call.

A Notice of Complaint was mailed via Priority Mail to Renkly on December 8, 2015 with a December 28, 2015 deadline to respond. US Post Office records indicate the letter was delivered on December 14, 2015 at 1:08 pm. Renkly did not respond to the Complaint.

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

Probable Cause Discussion:

Bleau LaFave stated that due to the lack of information in the complaint, there is not probable cause that a violation of One Call law occurred. Dan Kaiser stated the complaint is ambiguous. Close proximity is a relative term. No footage was given, so he cannot support the complaint. Dan Kaiser moved to dismiss the complaint. Bleau LaFave seconded the motion. **Motion carried unanimously on a Roll Call Vote.**

There being no further business Larry Janes asked for a motion to adjourn. Erin Hayes so moved. Fay Jandreau seconded the motion. **Motion carried unanimously on 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. Minutes were prepared by Larry Janes.