

MINUTES

South Dakota One Call Notification Board Enforcement Panel Conference Call

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

Friday, March 4, 2016 - 10:00 AM Central Time, 9:00 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: John Ward; Fay Jandreau; Doug Larson; Erin Hayes; Bleau LaFave. Also attending: Adam de Hueck, Legal Counsel; Executive Director, Larry Janes.

Other attendees:

Dan Kaiser, CenturyLink

OC16-001 - In the Matter of the Complaint Filed by the City of Pierre, SD against CenturyLink, for an incident occurring on December 20, 2015, at the Intersection of Sully and Cleveland, Pierre, SD.

On January 16, 2016 the City of Pierre, SD filed a complaint against CenturyLink alleging that CenturyLink failed to respond to an emergency locate on December 20, 2015 until 2 hours after the locate was due.

CenturyLink responded on February 16, 2016 by admitting their contractor did not respond as expected.

CenturyLink had three similar Complaints filed against it in 2013 and one in 2014, but none since that time.

Today, shall the Enforcement Panel of the South Dakota One Call Notification Board find that there is probable cause that CenturyLink 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 a violations of 49-7A-8 and Administrative Rule 20:25:03:10 occurred. Doug Larson seconded the motion. **Motion carried unanimously upon a roll call vote.**

Discussion of Intent:

Fay Jandreau made a motion that this was an unintentional violation. Bleau LaFave seconded the motion. **Motion carried unanimously upon a roll call vote.**

Penalty Discussion:

Doug Larson asked about previous penalty amounts for similar violations. Larry Janes mentioned the previous complaints against CenturyLink and what penalty amounts were assessed at that time. John Ward stated that we could not impose larger penalty amounts because those complaints did not occur within the previous twelve months. Fay Jandreau made a motion stating that based on the level of corrective action that CenturyLink had taken against the locator, there should be no penalty. Doug Larson suggested that he wasn't sure that there should be no penalty. John Ward agreed. Fay Jandreau said that his train of thought was that the contractor had failed to meet their obligation, but that CenturyLink has done what they can do. An additional penalty would not correct any further action. Erin Hayes said that she hopes that CenturyLink places this back on USIC. There needs to be a strong relationship with contractors. The motion failed due to a lack of a second. Doug Larson then made a motion to assess a \$1,000 penalty with \$500 suspended, with the following requirements: CenturyLink 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, CenturyLink and USIC must attend a Damage Prevention meeting in 2016, and CenturyLink and USIC 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 shall 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. John Ward seconded the motion. **Motion carried unanimously upon a roll call vote.**

OC16-002 - In the Matter of the Complaint Filed by the City of Pierre, SD against CenturyLink, for an incident occurring on January 24, 2016, at the Intersection of Poplar and Third, Pierre, SD.

On January 28, 2015 the City of Pierre experienced an early morning water break. The City of Pierre alleges that CenturyLink did not show up to locate facilities or call.

CenturyLink did not respond to this Complaint by the Answer Deadline of February 22, 2016.

CenturyLink had three similar Complaints filed against it in 2013 and one in 2014, but none since that time, other than the previous complaint considered today by the Panel.

Today, shall the Enforcement Panel of the South Dakota One Call Notification Board find that there is probable cause that CenturyLink 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 a violations of 49-7A-8 and Administrative Rule 20:25:03:10 occurred. Erin Hayes seconded the motion. **Motion carried unanimously upon a roll call vote.**

Discussion of Intent:

Bleau LaFave made a motion stating this was an unintentional violation. Fay Jandreau seconded the motion. **Motion carried unanimously on a roll call vote.**

Penalty Discussion:

Doug Larson stated that he is frustrated that CenturyLink did not respond to the complaint. Erin Hayes agreed. Doug Larson made a motion stating that CenturyLink be assessed \$1,000 penalty with \$0 suspended, due to CenturyLink's lack of response, with the following requirements: CenturyLink 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, CenturyLink and USIC must attend a Damage Prevention meeting in 2016, and CenturyLink and USIC 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. John Ward seconded the motion. Larry Janes asked for clarification regarding if CenturyLink and USIC must attend one or two of the Spring Damage Prevention meetings, based on the requirements of OC16-001. Adam de Hueck stated one meeting should suffice. Erin Hayes seconded the motion. **Motion carried unanimously on a roll call vote.**

There being no further business Larry Janes asked for a motion to adjourn. John Ward so moved. Fay Jandreau seconded the motion. **Motion carried unanimously on a Roll Call Vote.**

Meeting Adjourned.

Please note: This was 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 the parties involved in the complaints were taken during this call.