

MINUTES

South Dakota One Call Notification Board

Enforcement Panel Conference Call

Location: Heavy Constructors

4101 Deadwood Ave., Rapid City SD

Friday, September 23, 2016 - 2:00 PM Central Time, 1:00 PM Mountain Time

Roll Call:

Enforcement Panel Members in attendance: John Ward, Erin Hayes, Kurt Pfeifle, Doug Larson, Todd Chambers; Amanda Reiss, Legal Counsel; Larry Janes, Executive Director.

Other attendees:

Toby Bordewyk, Montana-Dakota Utilities

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

OC16-010 – In the Matter of the Complaint Filed by Montana-Dakota Utilities (MDU), Spearfish, South Dakota, Against New Way Builders (New Way), Pine Haven, Wyoming for an Incident Occurring on July 22, 2016, at Split Rock Rd, Sturgis, S.D

On August 31, 2016 MDU filed a complaint against New Way, alleging that New Way dug without requesting a locate ticket, which resulted in the damage of a 2", 25 psi gas line being cut.

New Way responded on September 22, 2016, disputing the Complaint by stating that this incident occurred on private property in an undeveloped subdivision. New Way went on to state that in the future, any digging done on private or public right of way will be required to have locates done no matter where the assumed utilities are located.

Larry Janes stated there have been no previous complaints filed against New Way.

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

Probable Cause Discussion: Kurt Pfeifle made a motion stating there is probable cause that New Way violated SDCL 49-7A-5. Erin Hayes seconded the motion. **Motion carried unanimously on a roll call vote.**

Discussion of Intent: John Ward thought this was an unintentional violation. Todd Chambers mentioned previous legal advice on this subject, that an excavator should know to call for locates, even if they're working in a different state. Even though each state's laws vary slightly, calling for locates before digging is required everywhere in the U.S. Because of this, he felt it was an intentional violation. Kurt Pfeifle agreed and made a motion stating this was an intentional violation. Todd Chambers seconded the motion. **Motion carried unanimously on a roll call vote.**

Penalty Discussion: Kurt Pfeifle asked about previous complaint penalties. He stated this was a dangerous situation, in that this was a 2" gas line. Larry Janes gave a rundown of previous penalty amounts since 2013. There was some discussion of whether or not a penalty amount of \$1,000 with \$250 suspended or \$500 suspended should be assessed. Todd Chambers mentioned that, according to the complaint by MDU, this was not the first damage by New Way. Todd Chambers made a motion that a \$1,000 penalty should be assessed with \$500 suspended with the following requirements: New Way 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, New Way must attend a Damage Prevention meeting in 2017, and New Way 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.**

There being no further business Larry Janes asked for a motion to adjourn. Doug Larson so moved. Kurt Pfeifle seconded. **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 either party involved in the complaint were taken during this call.

Minutes of this meeting were prepared by Larry Janes, Executive Director, South Dakota One Call Notification Board.

Larry L. Janes
Executive Director
South Dakota One Call
exedir@sdonecall.com
(605) 339-0529

