

# MINUTES

## South Dakota One Call Notification Board Enforcement Panel Conference Call

Tuesday, August 16, 2022 at 10:30AM CT (9:30AM MT)

**Panel Members: Mark Meier, Lloyd Rave, Jim Scull**

**Also in attendance:**

**Board Members: Ryan Barr, Kay Braaten, Scott Weise**

**Brett Koenecke, Legal Counsel; Cody Honeywell, Legal Counsel; Codi Gregg, Executive Director**

**Guests in attendance: Chad Egeberg, NorthWestern Energy, Lexie Cramer, Brooks Construction, Dyan Gillean, Magellan Midstream Partners.**

A brief description of the Enforcement Panel process: This was a legal proceeding and no comments were taken by any of the parties involved in the Complaints during this call. A probable cause determination was 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 Board Order will be mailed to each party after that Board Meeting. Please note, no payment is due until the final order is issued.

Factors to be considered in determining the amount of the penalty, if assessed shall be:

1. The amount of damage, degree of threat to public safety and the inconvenience caused.
2. The respondent's plan and procedures to ensure future compliance with statutes and rules.
3. Any history of previous violations.
4. Other matters as justice requires.

**49-7A-18. Penalties.** Except as provided in § 49-7A-19 and in addition to all other penalties provided by law, any person who violates or who procures, aids, or abets in the violation of § 49-7A-2, 49-7A-5, 49-7A-8, or 49-7A-12, or any rules promulgated pursuant to § 49-7A-2, 49-7A-5, or 49-7A-8 **may be assessed a penalty of up to one thousand dollars for the first violation and up to five thousand dollars for each subsequent violation that occurs within twelve months of the initial violation.**

**49-7A-19. Penalties for intentional violations.** In addition to all other penalties provided by law, any person who intentionally violates or who intentionally procures, aids, or abets in the violation of § 49-7A-2, 49-7A-5, 49-7A-8, or 49-7A-12, or any rules promulgated pursuant to § 49-7A-2, 49-7A-5, or 49-7A-8 **may be assessed a penalty of up to five thousand dollars for the first violation and up to ten thousand dollars for each subsequent violation that occurs within twelve months of the initial violation.**

**49-7A-20. Each violation as separate offense.** **Each violation of any statute or rule of the Statewide One-Call Notification Board constitutes a separate offense. In the case of a continuing violation, each day that the violation continues constitutes a separate violation.**

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

**OC22-003** In the matter of the complaint filed by **NorthWestern Energy**, Mitchell, SD against **H & W Contracting, LLC.**, Sioux Falls, SD for an incident occurring April 22, 2022 at 407th Ave and North Harmon Drive in Mitchell.

Deadline to Respond was May 27, 2022. Response was received on June 2, 2022.

There is no previous history with H & W Contracting, LLC.

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

Mark Meier opened discussion on the complaints. As stated in the complaint, there was warning tape and marks visible, excavation continued damaging the primary. Mark Meier stated a verification ticket should have been submitted.

Mark Meier made the motion to dismiss the violation of 20:25:03:05:02, as the marks were preserved. Mark Meier continued his motion stating probable cause did exist of an intentional violation of 20:25:03:05:03, it was known the lines were there. Mark recommended a penalty in the amount of \$1,000 with \$250 suspended with H and W meeting the requirements listed below:

1. Respondent must not be found guilty of a One Call violation within 12 months of the Board Order,
2. The penalty payment must be made within 30 days of the Board Order,
3. Respondent must attend a Damage Prevention meeting in 2023.
4. Respondent 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 printed and signed names of attendees will be submitted to the Executive Director of South Dakota One Call within 30 days of the Board Order.
5. Respondent will arrange a face to face meeting with claimant to review the damage, dangers while working around utilities and safe practices. This meeting is to take place within 30 days of the Board Order being issued.

Lloyd Rave seconded the motion. **Motion carried unanimously upon a roll call vote.**

**OC22-004A** In the Matter of the Complaint filed by **Dan Kaiser**, Sioux Falls, South Dakota against **CenturyLink / Lumen Technologies**, Sioux Falls, South Dakota for an incident occurring on April 29, 2022 at 1200 South Kevin Circle in Sioux Falls, South Dakota.

Deadline to Respond was June 14, 2022.

The Complaint was requested to be withdrawn on July 7, 2022 by Dan Kaiser.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board accept the request to withdraw the Complaint or does the Panel 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?

The Panel reviewed the request to withdraw the complaint as filed by Dan Kaiser. Lloyd Rave made the motion to accept the request to withdraw the complaint. Mark Meier seconded the motion. **Motion carried unanimously upon a roll call vote.**

**OC22-004B** In the Matter of the Complaint filed by **Dan Kaiser**, Sioux Falls, South Dakota against **Midco**, Sioux Falls, South Dakota for an incident occurring on April 29, 2022 at 1200 South Kevin Circle in Sioux Falls, South Dakota.

Deadline to Respond was June 14, 2022. Response was received on June 10, 2022.

The Complaint was requested to be withdrawn on July 7, 2022 by Dan Kaiser.

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

The Panel reviewed the request to withdraw the complaint as filed by Dan Kaiser. Lloyd Rave made the motion to accept the request to withdraw the complaint. Jim Scull seconded the motion. **Motion carried unanimously upon a roll call vote.**

**OC22-005** In the Matter of the complaint filed by **NorthWestern Energy**, Brookings, SD against **Halme, Inc.**, Lake Norden, SD for an incident occurring May 4, 2022 at 23425 456th Avenue in Madison.

Deadline to Respond was June 3, 2022. Response was received on June 9, 2022.

There is no previous history with Halme Inc.

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

The Panel reviewed the complaint, noting the damage of the tracer wire. There was not a call to South Dakota 811 as stated in state law, 49-7A-12. Jim Scull made the motion that probable cause did exist in the violation of 49-7A-12, the violation was unintentional and was something that could easily happen just need to report the damage. Jim Scull recommended a penalty in the amount of \$500 with \$250 suspended with Halme meeting the following requirements:

6. Respondent must not be found guilty of a One Call violation within 12 months of the Board Order,
7. The penalty payment must be made within 30 days of the Board Order,
8. Respondent must attend a Damage Prevention meeting in 2023.
9. Respondent 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 printed and signed names of attendees will be submitted to the Executive Director of South Dakota One Call within 30 days of the Board Order.
10. Respondent will arrange a face to face meeting with claimant to review the damage, dangers while working around utilities and safe practices. This meeting is to take place within 30 days of the Board Order being issued.

Lloyd Rave seconded the motion. **Motion carried unanimously upon a roll call vote.**

**OC22-006** In the Matter of the complaint filed by **City of Crooks**, Crooks, SD against **Brooks Construction**, Sioux Falls, SD for an incident occurring June 1, 2022 at 25797 475th in Renner.

Deadline to Respond was June 30, 2022. Response was received on June 24, 2022.

There is no previous history with Brooks Construction.

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

The Panel discussed the complaint, noting that specific statute violated was not listed. As the Panel does not have the authority to assign liability of a violation, Mark Meier made the motion to dismiss the complaint. This complaint can be refiled with South Dakota 811. Jim Scull seconded the motion. **Motion carried unanimously upon a roll call vote.**

**OC22-007** In the Matter of the complaint filed by **Magellan Midstream Partners, LP**, Tulsa, OK against **Mr. Toy Litzel**, Edgemont, SD for an incident occurring June 8, 2022 at Litzel Farmland in Edgemont.

Deadline to Respond was July 8, 2022. Response was received on July 7, 2022.

There is no previous history with Mr. Toy Litzel.

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

Lloyd Rave opened discussion on the complaint, reviewing the alleged violation. 49-7A-1 addresses definitions, therefore not able to be violated. Mark Meier made the motion to dismiss the complaint, as the Panel is not able to assign liability. This complaint can be refiled with South Dakota 811 with a statute violation listed on the complaint. Jim Scull seconded the motion. **Motion carried unanimously upon a roll call vote.**

**OC22-008** In the Matter of the complaint filed by **City of Crooks**, Crooks, SD against **Ground Water Landscape and Irrigation**, Sioux Falls, SD for an incident occurring June 20, 2022 at Superior Avenue and Executive Avenues in Crooks,

Deadline to Respond was July 26, 2022. Response was received on July 9, 2022.

There is no previous history with Ground Water Landscape and Irrigation.

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

Mark Meier reviewed the complaint with the Panel, addressing no violation listed. Again, as the Panel does not have authority to assign a violation, Mark Meier made the motion to dismiss the complaint, allowing the City of Crooks to refile the complaint with the statute(s) violated to be listed on the complaint form. Lloyd Rave seconded the motion. **Motion carried unanimously upon a roll call vote.**

**OC22-009** In the Matter of the complaint filed by **City of Crooks**, Crooks, SD against **Ramstad Construction**, Colton, SD for an incident occurring June 29, 2022 at 708 South West Avenue in Crooks.

Deadline to Respond was July 26, 2022. No response has been received as of August 10, 2022.

There is no previous history with Ramstad Construction.

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

Lloyd Rave made the motion to dismiss the complaint, as no violation was specifically addressed on the complaint form. South Dakota 811 extends the opportunity for City of Crooks to refile the complaint with a violation listed. Mark Meier seconded the motion. **Motion carried unanimously upon a roll call vote.**

Having no further business, Jim Scull made the motion to adjourn the panel and conference call. Lloyd Rave seconded the motion. **Motion carried unanimously upon a roll call vote.**

**Please note:** This was a legal proceeding and only written information provided by the Complainants and the written response from the Defendants was considered per SDCL 49-7A-25. No comments from the parties involved in the complaints will be taken during this call.