

MINUTES

South Dakota One Call Notification Board Enforcement Panel Conference Call

Friday, January 29, 2021 at 10:00AM CT (9:00AM MT)

Panel Members: Mark Meier, Loren Beld, Bleau LaFave

Also in attendance: Brett Koenecke, Legal Counsel; Cody Honeywell, Legal Counsel; Larry Janes, Executive Director; Codi Gregg, Deputy Director.

Guests in attendance: Derek Nisly, Bob Conway, RC Scull from RCS Construction and Marcus Christensen from MDU.

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 insure 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:

OC20-090 In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against CSI (CSI), Sioux Falls, South Dakota for an incident occurring on November 7, 2020 at 23590 Wilderness Canyon Road in Rapid City, South Dakota.

Deadline to Respond was December 22, 2020. No response was received.

There is previous history with CSI.

OC20-076: Enforcement Panel found probable cause of a violation of 49-7A-5 and 49-7A-8, the violations was intentional and recommended \$1,000 with \$750 suspended per violation for a total of \$2,000 with \$1,500 suspended with CSI meeting the requirements. The One Call Board has not yet met to issue a Board Order on this Docket.

OC20-086: Enforcement Panel found probable cause of a violation of 49-7A-5, the violation was intentional and recommended \$1,000 with \$500 suspended with CSI meeting the requirements. The One Call Board has not met to issue a Board Order on this docket.

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

The Panel opened discussion on this complaint by reviewing the history with CSI. Since no orders have been issued on the two previous complaints, the recommendation can not be considered in this motion.

Mark Meier made the motion that probable cause did exist in the violation of 49-7A-5 and the violation was intentional. Bleau LaFave seconded the motion. **Motion carried unanimously upon a roll call vote.**

Bleau LaFave discussed the penalty allowed under 49-7A-19, as an intentional violation the penalty can be up to \$5,000. Bleau LaFave made a motion to assess a penalty in the amount of \$5,000 with \$3,200 suspended with CSI meeting the following requirements:

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 2021.
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.

Loren Beld seconded the motion. **Motion carried unanimously upon a roll call vote.**

OC20-092 - In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Jones Construction Company (Jones) Rapid City, South Dakota for an incident occurring on December 3, 2020 at 5630 Bing, Rapid City, South Dakota.

Deadline to Respond was January 4, 2021. No response was received as of January 18, 2021.

There is no previous history with Jones. Offer of Resolution was sent with the Notice of Complaint, deadline to respond was January 4, 2021. No response to the offer has been received as of January 14, 2021.

Jones Construction accepted the Offer of Resolution for this complaint. As the offer was accepted, the Panel did not review the complaint. No action was taken.

OC20-093 In the Matter of the Complaint filed by RCS Construction (RCS) Rapid City, South Dakota against Montana Dakota Utilities (MDU) Rapid City, South Dakota for an incident occurring on December 16, 2020 at 1636 E St Patrick Street in Rapid City, South Dakota.

Deadline to Respond was January 14, 2021. Response was received on January 13, 2021. There is previous history with MDU.

OC19-050: Unintentional violation of 49-7A-8, \$1,000 with \$250 suspended. Board Order was issued on February 20, 2020. Conditions were met and docket closed on April 22, 2020.

OC20-002: Unintentional violation of 49-7A-8, \$5,000 with \$3,000 suspended. Board Order was issued on April 16, 2020. Conditions have not been met as of December 9, 2020.

OC20-039: Dismissed by Panel for no probable cause. Board Order issued in December 9, 2020.

OC20-067: Panel found unintentional violation of 49-7A-9, recommended a penalty of \$1,500 with \$750 suspended with requirements. The Board Order has not been issued to date.

OC20-068: Panel recommended complaint be dismissed. The Board Order has not been issued to date.

OC20-089: Panel found an unintentional violation occurred for 49-7A-8, recommended a penalty of \$3,000 with \$1,500 suspended with MDU meeting requirements. This Board Order has not been issued to date.

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

Discussion was held on the complaint, Loren Beld stated a violation did occur but wasn't clear on intent. Loren Beld and Cody Honeywell both stated they believed the violation to be unintentional. Mark Meier stated he believed the violation was intentional for the following: ELM had sent MDU an "unlocatable form", exhibit 2 in the documentation on September 11, 2020. RCS and MDU met on site on December 11, 2020 giving MDU three months to correct the unlocatable line. The second locate also specifically asked for the line to be located.

Bleau LaFave agreed, stating the issue should have been addressed in some format and this is not the responsibility of the contractor. Loren Beld agreed.

As all Panel Members did agree that action should have been taken by MDU, Mark Meier made the motion that probable cause did exist in the violation of 49-7A-8 and the violation was intentional. Loren Beld seconded. **Motion carried unanimously upon a roll call vote.**

Loren Beld made the motion to assess a penalty in the amount of \$5,000 with \$3,000 suspended with MDU 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 2021.
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.

Mark Meier seconded the motion. **Motion carried unanimously upon a roll call vote.**

Having no further business, Loren Beld made the motion to adjourn the Panel and call. Bleau LaFave 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 will be considered per SDCL 49-7A-25. No comments from the parties involved in the complaints was taken during this call.

