

# MINUTES

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

Tuesday, May 10, 2022 at 1:30PM CT (12:30 PM MT)

**Panel Members: Mark Meier, Loren Beld and Lloyd Rave**

**Also in attendance: Brett Koenecke, Legal Counsel; Cody Honeywell, Legal Counsel; Codi Gregg, Executive Director**

**Guests in attendance: Joe Muth, Lumen Technologies; Jesse Sorenson, Black Hills Electric Coop; Bob Roth, Runge Enterprises, Mary Runge, Runge Enterprises.**

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:

**OC22-001** In the Matter of the Complaint filed by Askland Ditching, Rapid City, South Dakota against Black Hills Electric Coop, Custer, South Dakota for an incident occurring on March 4, 2022 at 8007 Katrina Court in Rapid City, South Dakota.

Deadline to Respond was March 25, 2022. Response was received on March 17, 2022.

There is no previous history with Black Hills Electric Coop.

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

Mark Meier opened discussion, stating in the response Black Hills Electric was late responding to the locate. The Panel reviewed the complaint, there has been no previous history with Black Hills Electric Coop. Mark Meier made the motion that probable cause does exist of an unintentional violation of 49-7A-9 did occur, recommended a penalty in the amount of \$1,000 with \$250 suspended with Black Hills Electric Coop 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 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.

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

**OC22-002** In the Matter of the Complaint filed by Lumen Technologies, Sioux Falls, South Dakota against Runge Enterprises, Sioux Falls, South Dakota for an incident occurring on April 7, 2022 at 4600 – 4700 West 41<sup>st</sup> Street in Sioux Falls, South Dakota.

Deadline to Respond was May 5, 2022. Response was received on May 2, 2022.

There is previous history with Runge Enterprises, most recently from 2020. The history will not be considered.

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

Mark Meier opened discussion regarding a located line, as active. Caution was to be used when excavating around the utility. The Panel believed the contractor thought the line was lowered or abandoned and out of the dig zone, therefore did not believe probable cause existed in the violation of 49-7A-12. Mark Meier made the motion to dismiss the complaint. Loren Beld seconded the motion. **Motion carried unanimously upon a roll call vote.**

Having no further business, Loren Beld made the motion to adjourn the panel. 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.