

MINUTES

South Dakota One Call Notification Board Enforcement Panel Conference Call

Thursday, November 4, 2021 at 2:00PM CT (1:00 PM MT)

Panel Members: Mark Meier, Steve Mohr, Lloyd Rave

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

Guests in attendance: Joe Muth, CenturyLink; Nick Winter and Jason Winter, Winter Contracting; Cassandra Russell and Jason Swanson, NorthWestern Energy; Paul Speakman, Troy Keller, Tracy Lipinski and Jeff Jude, MP NexLevel.

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:

OC21-007 In the Matter of the Complaint filed by CenturyLink (CenturyLink) Sioux Falls, South Dakota against Winter Contracting (Winter), Volga, South Dakota for an incident occurring on June 8, 2021 at 33rd Street and Minnesota Avenue in Sioux Falls, South Dakota.

There is no previous history with Winter Contracting.

The Panel opened discussion on this complaint, there is a lot happening in this complaint. The amount of damage and the disregard to the utilities is concerning. Steve Mohr stated the photos in the complaint do not show if the locates were completed and lead to more questions than answers. Fay Jandreau commented he agreed, what was not said in the documentation? There is cause to believe the locates weren't performed but the contractor was advised of the utilities. On the response, there was a locate ticket identified but not submitted. Both forms state to submit the locate ticket. The Panel does not have the authority to seek out documentation, it has to be provided. A verification should have been called in by the excavator prior to work starting. This docket was deferred and a letter requesting further documentation was sent to both parties, with a deadline for the information to be received by Codi Gregg and Larry Janes by November 2, 2021. Responses were received from both parties November 2, 2021.

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

Steve Mohr- opened discussion regarding the complaint and the violations. Mark Meier stated he believed liability for damages is not the responsibility of the panel to determine, only if a violation occurred. The complaint addresses damages on June 8 and June 9 of 2021. Steve Mohr and Lloyd Rave both agreed.

Mark Meier made the motion that probable cause did exist in the violation of 49-7A-12 (not calling 811), the violations were unintentional and recommended a penalty in the amount of \$750 with \$500 suspended, per violation day (June 8, 2021 and June 9, 2021) with Winter meeting the five standard 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 2022.
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.

Total penalty assessed in the motion is \$1,500 with \$1,000 suspended as stated above. The violation of 49-7A-10 is dismissed. Steve Mohr seconded the motion. **Motion carried unanimously upon a roll call vote.**

OC21-010 In the Matter of the Complaint filed by NorthWestern Energy (NorthWestern) Huron, South Dakota against Alliance Construction (Alliance), Sioux Falls, South Dakota for an incident occurring on June 9, 2021 at 27220 472nd Avenue in Harrisburg, South Dakota.

Deadline to Respond was July 23, 2021. Response was received on July 20, 2021.

There is no previous history with Alliance.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that there is probable cause that Alliance 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 and the response in length. Mark Meier asked for clarification on the high profile notifications. It is the responsibility of the operator to contact the excavator, per Admin Rule 20:25:03:10:02. Prior to excavation, an operator is to contact the excavator to conduct an on-site meeting to verify the excavation site in relation to the utility. No excavation can happen until that meeting happens. If the utility asks to be on site during excavation, they are allowed on site.

Mark Meier continued discussion, stating the complaint is not very clear and the evidence was not clear enough to determine what occurred. Steve Mohr agreed, stating that fault lies with both parties and that both parties knew the gas line was shallow. All utilities should be considered shallow.

Steve Mohr made the motion to dismiss the complaint. Lloyd Rave seconded the motion.
Motion carried unanimously upon a roll call vote.

OC21-011 In the Matter of the Complaint filed by NorthWestern Energy (NorthWestern) Huron, South Dakota against MP NexLevel, LLC (MP), Maple Lake, Minnesota for an incident occurring on July 28, 2021 at 309 North 2nd Street in Groton, South Dakota.

Deadline to Respond was August 23, 2021. Response was received on November 2, 2021. The Panel did approve and accept the response for consideration.

There is previous history with MP NexLevel from 2012 and 2021 that cannot be considered.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that there is probable cause that MP Nexlevel, LLC. 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 and the response. The contractor admitted fault, they did expose the utility, just did not pull up in time.

Steve Mohr made the motion that probable cause did exist in the violation of 49-7A-8, the violation was unintentional and recommended a penalty in the amount of \$1,000 with \$750 suspended with MP meeting the five standard requirements listed below. Steve Mohr continued his motion by recommending to dismiss the violation of 49-7A-10.

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 2022.
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.**

As a reminder, “Mark entire property” is not precise marking instructions. As per 49-7A-4 defines precise instructions. This is a violation of state law, MP NexLevel needs to define their work area.

OC21-012 In the Matter of the Complaint filed by NorthWestern Energy (NorthWestern) Huron, South Dakota against MP NexLevel, LLC (MP), Maple Lake, Minnesota for an incident occurring on August 24, 2021 at 602 North 3rd Street in Groton, South Dakota.

Deadline to Respond was September 23, 2021. Response was received on November 2, 2021. he Panel did approve and accept the response for consideration.

There is previous history with MP NexLevel from 2012 and 2021 that cannot be considered.

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

Steve Mohr opened discussion on the complaint listing a violation of 49-7A-10. As discussed through-out the Panel Meeting, the Panel does not believed liability for damages is the responsibility of the panel to determine, only if a violation occurred.

Steve Mohr made the motion to dismiss the complaint. Mark Meier seconded the motion. **Motion carried unanimously upon a roll call vote.**

Having no further business, Lloyd Rave made the motion to dismiss the panel and complete the call. Steve Mohr 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 were taken during this call.