

**SOUTH DAKOTA ONE CALL BOARD**

**OFFICE OF HEARING EXAMINERS  
PIERRE, SOUTH DAKOTA**

**OHE 20-02**

**IN THE MATTER OF THE COMPLAINT  
FILED BY MONTANA DAKOTA  
UTILITIES CO., RAPID CITY, SD,  
AGAINST STUEN CONSTRUCTION,  
DEADWOOD, SD, FOR AN INCIDENT  
OCCURRING ON SEPTEMBER 10,  
2020, AT 14 McMASTER STREET,  
LEAD, SD.**

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER**

The above-entitled matter came on for Hearing before a quorum of the South Dakota One Call Board on Tuesday, May 4, 2021. The Hearing was held via Zoom, an internet videoconference. Presiding over the SDCL Ch. 1-26 Hearing was Catherine Williamson, Chief Hearing Examiner, Office of Hearing Examiners. Mr. LeRoy Stuen from Stuen Construction (Respondent) appeared at the hearing. Attorney Lindsey Riter-Rapp represented Montana Dakota Utilities (MDU).

**ISSUES**

What penalties shall be imposed on Respondent for violations of SDCL 49-7A-8?

**FINDINGS OF FACT**

1. On September 10, 2020, at 14 McMaster Street, Lead, South Dakota, an excavation occurred which caused damage to a service line owned by MDU.
2. The excavation was conducted by LeRoy Stuen of Stuen Construction.
3. Respondent, on the record, admitted fault and accepts responsibility for the violation of SDCL 49-7A-8.
4. Respondent does not contest the complaint filed by MDU in this matter.
5. The complaint, as filed by MDU, is found to be fact in this matter.
6. This is the second violation of one-call rules by Respondent or his employees, within the previous 12-month period.
7. On November 25, 2020, the Board's Enforcement Panel assessed a \$2,000 penalty and suspended \$500 if Respondent met the conditions set by the Panel. This recommendation was sent to Respondent.
8. The conditions for the suspended penalty are that:
  - a. Respondent must not be found guilty of a One-Call violation within 12 months of the Board Order,
  - b. The penalty payment of \$1,500 must be made to P.O. Box 187, Rapid City, SD 57709.
  - c. Respondent must attend a Damage Prevention meeting in 2021.

- d. 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 thirty (30) days of the Board Order being issued.
  - e. Respondent will arrange a face-to-face meeting with MDU to review the damage, dangers while working around utilities, and safe practices. This meeting is to take place within thirty (30) days of the Board Order being issued.
9. Respondent signed a Request for Hearing form on December 15, 2020. It was filed with the Board on December 19, 2020.
  10. To the extent any of the foregoing are improperly designated and are, instead, conclusions of law, they are hereby redesignated and incorporated herein as conclusions of law.

### **CONCLUSIONS OF LAW**

1. The Board has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-7A and ARSD 20:25.
2. SDCL 49-7A-18. 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.
3. SDCL 49-7A-19. 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.
4. The violation by Respondent was found to be intentional and it was the second violation within a 12-month period.
5. To the extent any of the foregoing are improperly designated and are, instead, findings of fact, they are hereby redesignated and incorporated herein as findings of fact.

### **ORDER**

The Board, by a vote of the majority, determined that the penalty to Stuen Construction shall be \$2000, with \$500 penalty suspended if Stuen Construction meets the conditions set by the Enforcement Panel. This is the same penalty previously assessed by the Enforcement Panel. These Findings of Fact and Conclusions of Law

and Order are hereby signed and ordered by the South Dakota One Call Notification Board.

Dated this 12<sup>th</sup> day of July 2021.

A handwritten signature in blue ink, appearing to read 'Fay Jandreau', is written over a horizontal line. The signature is stylized and cursive.

Fay Jandreau  
Board Chairman

**CERTIFICATE OF SERVICE**

I certify that on July 12, 2021, a true and correct copy of this Findings of Fact, Conclusions of Law, and Order was mailed and e-mailed to each party listed below.

  
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