

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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

OC20-065

NOTICE OF HEARING

On September 18, 2020, the South Dakota One Call Board received a Complaint filed by Montana Dakota Utilities Co. (herein "Claimant"), against Stuen Construction, LLC (herein "Respondent"), for an incident occurring on September 10, 2020, at 14 McMaster Street, Lead, SD. The Complaint alleges a violation SDCL 49-7A-8 when Respondent was using an excavator to dig and hit the gas service line to the home. Claimant alleges the line was clearly marked and the locates were accurate and that Respondent should have potholed the gas line prior to digging in the area of the service line. Claimant alleges 811 was notified of the damage and gas was not blowing.

A copy of the Complaint was sent to Respondent on September 22, 2020. The deadline to respond was October 15, 2020. Respondent has not answered the Complaint as of October 29, 2020.

On October 29, 2020, the Enforcement Panel (herein "Panel") convened pursuant the authority present in SDCL 49-7A. The Panel did find probable cause that an intentional violation of SDCL 49-7A-8 occurred.

The panel assessed a \$2,000 penalty and suspended \$500 if the respondent met conditions as set by the panel. On November 25, 2020, the panel recommendation was sent to the Complainant and Respondent. On December 19, 2020, Respondent filed a request for hearing.

The board has jurisdiction over this matter pursuant to SDCL Chapter 49-7A and ARSD Chapter 1-26.

A hearing on this matter shall be held on May 4, 2021, at 11:30 a.m. – 1:45 p.m. CDT. The hearing will be conducted via Zoom. All persons testifying will be subject to cross examination by the parties.

The issues to be heard at the above date and time shall be: (1) whether Stuen Construction, LLC violated SDCL 49-7A-8 when they struck the service line and (2) if Stuen Construction, LLC did violate SDCL 49-7A-8, whether penalties shall be imposed by the board pursuant to SDCL 7A-18 and/or 49-7A-19, and if so, what those penalties shall be.

The hearing shall be an adversarial proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for hearing, the final decision will be based solely on the testimony and evidence provided, if any, during the hearing. If you or your representative fail to appear at the time and place set for hearing, a final decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the board will consider all evidence and testimony that was presented at the hearing. The board will then enter Findings of Fact, Conclusions of Law and a final decision regarding this matter. As a result of the hearing, the board shall determine whether Stuen Construction, LLC violated any statute or rule of the board, and, if so, whether any penalties shall be imposed.

The board's final decision may be appealed by the parties to the State Circuit Court and the State Supreme Court as provided by law.

Dated this 6th day of April 2020.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

BRETT KOENECKE
CODY HONEYWELL
Attorneys for South Dakota One Call
503 S. Pierre Street
P. O. Box 160
Pierre, SD 57501
(605) 224-8803
brett@mayadam.net
cody@mayadam.net

CERTIFICATE OF SERVICE

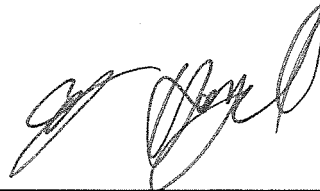
Cody Honeywell of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 6th day of April, 2020, he electronically filed and served via email and/or first class mail, postage prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at:

Mr. Larry Janes
Executive Director
SD One Call Board
PO Box 187
Rapid City, SD 57709
exedir@sdonecall.com

Ms. Codi Gregg
Deputy Director
South Dakota 811
PO Box 187
Rapid City, SD 57709
deputydirector@sd811.com

Montana Dakota Utilities Co.
Mr. Marcus Christensen
PO Box 1060
Rapid City, SD 57709
marcus.christensen@mdu.com

Mr. Leroy Stuen
Stuen Construction
PO Box 217
Deadwood, SD 57732
leroystuen@yahoo.com



CODY HONEYWELL