

1 TUESDAY, MAY 4, 2021

2 HEARING EXAMINER: We will be on the record in the
3 matter of the complaint filed by Montana Dakota Utilities of
4 Rapid City, South Dakota, against Stuen Construction of
5 Deadwood for an incident occurring on September 10th of 2020,
6 at 14 McMaster Street in Lead, South Dakota. It is May 4th of
7 2021 and the time is approximately 11:50 a.m. central time. It
8 is the time and date noticed for the hearing.

9 The issue to be determined at this time will be
10 whether Stuen Construction, LLC, violated 49-7A-8 when they
11 struck a service line, and if Stuen Construction did violate
12 the law, whether penalties shall be imposed by the board and if
13 so, what those penalties shall be.

14 Mr. Stuen is present at the hearing today, Mr. Leroy
15 Stuen is present at the hearing today. It is a hearing by Zoom
16 or teleconference, and MDU is also present at the hearing today
17 and is represented by attorney Lindsey Riter-Rapp. With that,
18 Ms. Rapp, I will turn it over to you and you may present your
19 case.

20 MS. RITER-RAPP: Thank you, Your Honor. At this time
21 MDU would call as its first witness Marcus Christensen please.

22 HEARING EXAMINER: Mr. Christensen, I'm going to swear
23 you in at this time, it is a new case.

24 Thereupon,

25 MARCUS CHRISTENSEN,

1 called as a witness, being first duly sworn as hereinafter
2 certified, testified as follows:

3 HEARING EXAMINER: The record shall reflect the
4 witness is sworn.

5 MR. STUEN: Can I interrupt real quick?

6 HEARING EXAMINER: Sure, go ahead.

7 MR. STUEN: I guess I'm not trying to say I'm guilty.
8 I'm 100 percent guilty. You know, it's the fine that I'm
9 trying to, I guess, negotiate. Hitting the gas line, yes, I
10 definitely hit the gas line and I'm guilty of all that. Just
11 to let you know, if we gotta go through this whole process.
12 I'm not denying that I did hit the gas line.

13 HEARING EXAMINER: Okay. So we have that on the
14 record. Now, the penalty assessed was a \$2,000 penalty and
15 suspended \$500, if you meet the conditions. Was that the
16 penalty that you are disputing?

17 MR. STUEN: Yes.

18 HEARING EXAMINER: Okay. And because we have an
19 admission on line or on the record, I think we will move
20 directly to executive session. If there's no objection from
21 MDU's attorney, we are going to move directly to executive
22 session for penalty phase in this matter and so they can
23 determine how much, if there is a penalty to be imposed.

24 MS. RITER-RAPP: Can I just ask one point of
25 clarification? Obviously the statute that he's alleged to have

1 violated was that that you referenced at the time of the
2 introduction. I'm assuming that he's admitting that he
3 violated that particular statute.

4 HEARING EXAMINER: Is that correct, Leroy?

5 MR. STUEN: Yes, that's correct.

6 MS. RITER-RAPP: I would obviously leave it to the
7 board's discretion in terms of an appropriate penalty; so I
8 have no objection to moving into executive session.

9 HEARING EXAMINER: So I'm going to open up breakout
10 room number one and board members will move in there, and I
11 don't believe this will take too long so everybody just --
12 everyone else just remain on the line.

13 MR. STUEN: Okay.

14 (Brief break for executive session.)

15 HEARING EXAMINER: I believe everyone is back here in
16 the main session and we are back on the record. We were off
17 the record momentarily for executive session. Are there any
18 motions from the board?

19 MR. KAISER: This is Dan. I'll make a motion that the
20 penalty stay as previously assessed.

21 HEARING EXAMINER: Is there a second?

22 MR. BELD: I'll second that, this is Loren.

23 HEARING EXAMINER: Any discussion on that motion?

24 MR. KAISER: Well, can I clarify why the penalty is so
25 high?

1 HEARING EXAMINER: Go ahead.

2 MR. KAISER: The reason the penalty was assessed this
3 time around as 2,000 with a 500 suspended because this was an
4 intentional damage and your second violation within a year.

5 MR. STUEN: Can I speak on that?

6 HEARING EXAMINER: No, not at this time.

7 MR. STUEN: Okay.

8 HEARING EXAMINER: With that, if we could call roll
9 call, Ms. Gregg.

10 MS. GREGG: All in favor as the motion has been
11 presented with the penalty staying as assessed with the
12 recommendation. Fay Jandreau.

13 MR. JANDREAU: Aye.

14 MS. GREGG: Jim Scull.

15 MR. SCULL: Aye.

16 MS. GREGG: Dan Kaiser.

17 MR. KAISER: Aye.

18 MS. GREGG: Steve Mohr.

19 MR. MOHR: Aye.

20 MS. GREGG: Blue LaFave.

21 MR. LAFAVE: Aye.

22 MS. GREGG: Ed Anderson.

23 MR. ANDERSON: Aye.

24 MS. GREGG: Mark Meier.

25 MR. MEIER: Aye.

1 MS. GREGG: Lloyd Rave.

2 MR. RAVE: Aye.

3 MS. GREGG: And Loren Beld.

4 MR. BELD: Aye.

5 MS. GREGG: Motion carried unanimously.

6 HEARING EXAMINER: With that, Mr. Stuen, it appears
7 the board has not changed your fine in this matter at all, and
8 an order to that effect will be sent. Findings and conclusions
9 in this matter will be sent as well. And anything further? If
10 you would like to say anything to the board at this time, you
11 may.

12 MR. STUEN: Yeah, I'm just confused. You know, I've
13 been in the dirt business for about 12 years. My employee has
14 worked for me for about 10 years. I understand it's a second
15 violation of hitting a gas line, but it's not my actual second
16 violation, you know, my employee hit it. Within the last 10
17 years, he hit the gas line the first time, and then of course
18 myself hit the gas line, you know, the second offense to where,
19 you know, it's really been both of ours first violation in the
20 last eight years that he's worked for me and in the last 10, 12
21 years that I've done dirt work. So, you know, that's why --
22 that's kind of why I was trying to get a reduced fine, just
23 because, you know, it's necessarily not my second violation.
24 But I understand you guys's decision, I respect that.

25 HEARING EXAMINER: Okay. Thank you, Mr. Stuen, and I

1 appreciate your being here today and participating. With that,
2 we will be off the record in this matter.

3 MR. STUEN: So will I be mailed something or how do I
4 take care of the fine?

5 HEARING EXAMINER: Yes, the board will mail you
6 something in this matter.

7 MR. STUEN: Okay, sounds good. Well, everybody have a
8 great day and thanks for your time.

9 HEARING EXAMINER: Thank you, Mr. Stuen.

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STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF HUGHES)

I, Carla A. Bachand, RMR, CRR, Freelance Court Reporter for the State of South Dakota, residing in Pierre, South Dakota, did transcribe from a Zoom recording the preceding pages, 1 through 8, inclusive, and the transcript is of the audible portions of the recording.

Dated this the 12th day of May 2021.

Carla A. Bachand, RMR, CRR
Freelance Court Reporter