

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  
DARWIN TOOF, RAPID CITY, SD, FOR  
AN INCIDENT OCCURRING ON  
OCTOBER 15, 2020 AT 815 E NEW YORK  
STREET, LOT 29, RAPID CITY, SD.

**OC20-082**

**NOTICE OF HEARING**

On October 30, 2020, the South Dakota One Call Board received a Complaint filed by Montana Dakota Utilities Co. (herein "Claimant"), against Darwin Toof (herein "Respondent"), for an incident occurring on October 15, 2020, at 815 E New York Street, Lot 29, Rapid City, SD. The Complaint alleges violations of SDCL 49-7A-8 and 49-7A-12 when Respondent was responding to an emergency sewer leak and dug right through the gas line and locates. Gas was blowing; 811 was notified, and 911 was not notified.

A copy of the Complaint and Offer of Complaint Resolution was sent to Respondent on November 2, 2020. The deadline to respond to the Complaint or accept the Offer was November 23, 2020. Respondent had not answered the Complaint as of December 17, 2020. Respondent did not accept the Offer of Complaint Resolution.

On December 17, 2020, the Enforcement Panel (herein "Panel") convened pursuant to the authority present in SDCL 49-7A. The panel found sufficient evidence was presented to determine probable cause to believe an intentional violation of SDCL 49-7A-8 unintentional violation of SDCL 49-7A-12 occurred.

The panel assessed a \$2,000 penalty and suspended \$1500 if the respondent met conditions as set by the panel. On January 11, 2021, the panel recommendation was sent to the Complainant and Respondent. On February 1, 2021, 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, from 2:00 p.m. to 4:15 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 Darwin Toof violated SDCL 49-7A-8 when he struck an underground facility (2) whether Darwin Toof had a obligations to notify 911; and (3) if Darwin Toof had some violations or responsibilities or obligations, 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 Darwin Toof 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, 2021.

MAY, ADAM, GERDES & THOMPSON LLP

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### CERTIFICATE OF SERVICE

Cody Honeywell of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 6th day of April, 2021, 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:

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