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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 against Darwin Toof of Rapid City, South Dakota, for  
5 an incident occurring on October 15th of 2020 at 815 East New  
6 York Street, Lot 29, of Rapid City, South Dakota. The 811  
7 enforcement panel assessed a penalty if the respondent -- and  
8 suspended part of it, if the respondent met conditions as set  
9 out by the panel.

10 The issue for this hearing today is whether Mr. Toof  
11 violated the law when he struck an underground facility,  
12 whether he had an obligation to notify 911, and if Mr. Toof had  
13 some violations or responsibilities or obligations, whether  
14 penalties shall be imposed by the board, and if so, what those  
15 penalties shall be.

16 The 811 board is present, a quorum is present today.  
17 We have been in recess for a couple hours, but a quorum is now  
18 present. I am Catherine Williamson. I am a hearing officer  
19 with the Office of Hearing Examiners, and I'll be conducting  
20 the hearing today. Codi Gregg from the 811 board is also  
21 present. She will be helping with this video conferencing and  
22 some of the evidence she will put up. Lindsey Riter-Rapp is  
23 here present today and she's representing MDU. She will be  
24 presenting MDU's case in this matter. And she has present as a  
25 witness a Marcus Christensen.

1           With that, I am going to have Ms. Riter-Rapp go first,  
2 have her present her case, and then, Mr. Toof, I will have you  
3 then go and present your case and your evidence, if you have  
4 any, or tell us what your situation is in regards to this  
5 matter. And do either of the parties have any questions? Ms.  
6 Riter-Rapp, do you have any questions for me?

7           MS. RITER-RAPP: No, Your Honor.

8           HEARING EXAMINER: Mr. Toof, do you have any questions  
9 on how the procedure will be today?

10          MR. TOOF: No, I'm fine with it, ma'am.

11          HEARING EXAMINER: Okay, then we will go ahead with  
12 that, and Ms. Riter-Rapp, you may present your case.

13          MS. RITER-RAPP: Thank you, Your Honor. At this time  
14 we would call our first witness, Marcus Christensen.

15          HEARING EXAMINER: Mr. Christensen, I've heard from  
16 you a couple times today in other cases, but I am going to  
17 swear you in again.

18 Thereupon,

19                                 MARCUS CHRISTENSEN,

20 called as a witness, being first duly sworn as hereinafter  
21 certified, testified as follows:

22          HEARING EXAMINER: The record shall reflect the  
23 witness is sworn.

24                                 DIRECT EXAMINATION

25 BY MS. RITER-RAPP:

1 Q. Could you please introduce yourself to the board.

2 A. Marcus Christensen, I'm an FOC for Montana Dakota  
3 Utilities, also damage prevention coordinator for the Black  
4 Hills area for Montana Dakota Utilities.

5 Q. And what is an FOC?

6 A. In short, a project manager.

7 Q. And what are your duties as a project manager with  
8 MDU?

9 A. Facilitating the installation of our gas system and  
10 project work.

11 Q. And you indicated part of your duties is also damage  
12 control; is that correct?

13 A. Yes.

14 Q. And what specifically do you do under that title or  
15 that role?

16 A. When damages occur, I review the incidents that are  
17 presented and go through the case and review them and make  
18 determinations if a One Call violation has occurred.

19 Q. And how long have you been with MDU, Mr. Christensen?

20 A. For three years.

21 Q. And have you been in the position of the field  
22 operations coordinator and the damage control specialist that  
23 entire time?

24 A. Yes.

25 Q. And then just very briefly, what is your educational

1 background?

2 A. I have an engineering degree from South Dakota State.

3 Q. And do you have any additional training beyond that?

4 A. Attended Southeast Tech.

5 Q. Pardon me?

6 A. Southeast Tech in Sioux Falls.

7 Q. And what specifically, what training did you receive  
8 from them?

9 A. An associate's in mechanical engineering.

10 Q. Does part of your duties as the field operations  
11 coordinator and damage specialist include investigating  
12 possible One Call violations?

13 A. Yes.

14 Q. And are you specifically tasked with that area?

15 A. Specifically investigating them in person?

16 Q. Yeah, I mean, you are the primary contact for MDU as  
17 it relates to those?

18 A. Yep.

19 Q. And what is your involvement, if you would just go  
20 through in a little bit more detail what your involvement is  
21 when these events occur.

22 A. I receive a damage investigation from ELM, after the  
23 damage has occurred, ELM shows up on site, does their  
24 investigation, taking pictures and gathering some on-site  
25 information, putting it into a report that they then turn in to

1 me for review to go through and determine if a One Call  
2 violation has occurred, along with reviewing our internal  
3 documentation that our service techs provide and submit when  
4 they respond with the hit lines.

5 Q. And who is ELM?

6 A. A contract -- they are a locating company that works  
7 for MDU.

8 Q. Okay, but they also respond to One Call complaints on  
9 behalf of MDU?

10 A. Yeah, they respond to damages, yep.

11 Q. So any time there is damage, then ELM would be  
12 dispatched to do the investigation on behalf of MDU?

13 A. Yes.

14 Q. Okay, I want to draw your attention to the complaint  
15 at issue in this case. Can you please tell me when MDU was  
16 first notified of a possible One Call violation?

17 A. On October 15th at 1:30.

18 Q. October 15th of 2020?

19 A. Yes.

20 Q. And what information specifically was MDU provided at  
21 that time?

22 A. We were provided with an incident investigation from  
23 ELM, well, after the damage happened, then ELM turned in an  
24 investigation report.

25 Q. And so immediately after the incident, that

1 information or that damage is reported as part of the 811  
2 process; is that correct?

3 A. Yes.

4 Q. You received that information then or your office?

5 A. Yes.

6 Q. And then are you who forwards that information to ELM  
7 for the investigation or is there someone else?

8 A. No, when it gets called in, it goes through the 811,  
9 ELM gets the damage ticket, they respond, our guys are notified  
10 within the office and our guys respond to the damage as well,  
11 because the hit ticket is submitted through 811.

12 Q. So both ELM as well as MDU's team responds to the  
13 incident?

14 A. Yes.

15 Q. And so when was ELM -- excuse me, let me back up.  
16 What was the location of the possible violation as it relates  
17 to this case?

18 A. 815 New York Street in Rapid.

19 Q. Okay.

20 A. Lot 29, I believe. Yes.

21 Q. When was ELM then dispatched on site to conduct the  
22 investigation?

23 A. They appear to have arrived within the hour of the  
24 damage.

25 Q. Okay, and when was the alleged damage?

1           A.     At 1:30, and ELM arrived at 2 p.m., 1:30 p.m. and 2  
2 o'clock.

3           Q.     So ELM was dispatched not more than a half hour after  
4 the damage?

5           A.     Yep.

6           Q.     Okay, and is this standard operating procedure for MDU  
7 to have ELM conduct these investigations on your behalf?

8           A.     Yes.

9           Q.     And in addition to the investigation by ELM, you also  
10 review the report, you review the damage report, any  
11 information submitted to 811. Is there anything else I missed?

12          A.     No.

13          Q.     I want to draw your attention to what has been marked  
14 as MDU's Exhibit No. 2. Thank you. Mr. Christensen, have you  
15 seen this document before?

16          A.     Yes.

17          Q.     And what is this document?

18          A.     This is the incident report that we get from ELM after  
19 they are done investigating a hit line.

20          Q.     And once you receive this report from ELM, is that  
21 included in your file then as it relates to that particular  
22 damage event?

23          A.     Yes.

24          Q.     And is this document then held by MDU in the regular  
25 course of business?

1 A. Yep. Yes.

2 Q. And is this a true and correct copy of the report that  
3 was prepared by ELM as it relates to this incident?

4 A. Yes.

5 MS. RITER-RAPP: Your Honor, I would move to admit  
6 Exhibit No. 2 at this time.

7 HEARING EXAMINER: Okay. Mr. Toof, any objection to  
8 document number 2?

9 MR. TOOF: No.

10 HEARING EXAMINER: No. 2 is admitted.

11 EXHIBITS:

12 (MDU Exhibit No. 2 received into evidence.)

13 MS. RITER-RAPP: Thank you.

14 Q. (BY MS. RITER-RAPP) Mr. Christensen, at this time I  
15 want to review the report with you and walk through the  
16 findings of the investigation. Who is the contractor that was  
17 involved in this particular incident?

18 A. Darwin Toof.

19 Q. Okay. And what was the nature of the activities that  
20 the contractor was conducting at the time of the incident?

21 A. He was working on repairing a sewer line in the  
22 trailer park.

23 Q. And was MDU advised of the activities that would be  
24 conducted by Mr. Toof?

25 A. Yes.

1 Q. And were MDU's facilities then marked in preparation  
2 for the repair?

3 A. Yes.

4 Q. And who marked them for MDU?

5 A. ELM.

6 Q. You indicated that the location of the incident was  
7 815 East New York in Rapid City. MDU has facilities at this  
8 location?

9 A. Correct.

10 Q. Okay, and where are the facilities located on this  
11 property?

12 A. They are located -- I guess I would say from the map,  
13 I would say that they are located in the rear of the property.

14 Q. Okay, and we can go through that more when we look at  
15 the pictures. But what facilities then were impacted by this  
16 incident?

17 A. The service line to the trailer.

18 Q. Okay. And what information did the investigation  
19 reveal regarding the nature of the excavation that the  
20 contractor was engaged in at the time of the incident?

21 A. It revealed that the contractor was digging to make a  
22 sewer line repair and while digging, he hit the gas line with  
23 the excavator.

24 Q. And did the investigation reveal what steps Mr. Toof  
25 took after the line was hit?

1           A.    It reveals that he notified 811 after the line was  
2 hit.

3           Q.    Okay, and did he notify 911?

4           A.    No.

5           Q.    Were any photographs taken by ELM as part of their  
6 investigation?

7           A.    Yes.

8           Q.    Okay, and were these photographs taken at the time  
9 they were dispatched to the site?

10          A.    Yes.

11          Q.    Okay.  And are these the photographs that are  
12 reflected on pages five through nine, I believe, of Exhibit No.  
13 2?

14          A.    Yes.

15          Q.    At this time I would like to walk through the  
16 photographs with you, and if you could just refer to the page  
17 number and then either top or bottom and describe what's  
18 reflected in each picture.  We will start on the first page,  
19 which is page five.

20          A.    Okay.  The top picture there is the picture taken at  
21 the time of the locate; so that's just the locator saying here  
22 is the gas line, taking a picture of it.  The picture below  
23 it --

24          Q.    Can I back up?

25          A.    Yep.

1 Q. On that top photograph, help me understand then what  
2 is reflected in there in terms of the markings.

3 A. Looks like we have some gas and some communication  
4 lines located there at this time. I see some paint and orange  
5 flags and you see, it's faint, but you see kind of a yellow  
6 circle and a line that kind of goes up and swoops over to that  
7 meter set in the background.

8 Q. Okay. And so what coloring on that picture would  
9 reflect the markings for the gas line?

10 A. Yellow.

11 Q. Okay, and are there any flags or is it just the  
12 markings?

13 A. Doesn't appear to be flags in the picture.

14 Q. So it's the yellow markings on the photograph on the  
15 top on page five?

16 A. Yep.

17 Q. And that was the locate then that was conducted by  
18 ELM?

19 A. Yes.

20 Q. Moving to the picture below it then.

21 A. Yep.

22 Q. What's reflected in that picture?

23 A. So there you see you got this is where the damage  
24 occurred.

25 Q. If you could just describe in those photographs what

1 you are seeing and what they are identified by.

2 A. Okay. So in that picture you see the yellow marker  
3 post with the white sticker. That is the marker where they are  
4 saying the damage is at in the hole, and then you have a ruler  
5 to show a rough distance from the damage to where the locate  
6 marker post is just in front of the excavator to try to show  
7 you the distance or line it up between the locate and the  
8 damage.

9 Q. Okay, and so the locate marker, that's I guess the  
10 black kind of marker that's in the back of the picture?

11 A. Yeah, black and orange one, yep.

12 Q. And so the photograph is attempting to reflect  
13 essentially the damage in relation to the markings?

14 A. Correct.

15 Q. Okay. If we could move to the next photograph or set  
16 of photographs on page six. And Mr. Christensen, the top  
17 photograph on page six, what is reflected in that picture?

18 A. It's the same picture as -- it's the time of the  
19 locate when the locate happened, it's just a different angle,  
20 standing by the meter set taking the picture going the other  
21 direction towards where the service line ties in; so it's just  
22 a different view of that first picture that we discussed on  
23 page five.

24 Q. Okay, and what's reflected in that picture then? Help  
25 me understand where the locate marks are on that picture.

1           A.    It's faint, it's just to the left of where the gas  
2 riser is, there's some yellow paint going out towards and  
3 swoops around to the left and you can see the yellow circle  
4 from the previous picture out there.

5           Q.    Okay.  And then the picture on the bottom of page six,  
6 what is reflected in that photograph?

7           A.    Similar picture as to page five, just showing the  
8 damage with the marker posts -- the damage in relationship to  
9 the locate.

10          Q.    Okay.  And so in that photograph, I see kind of a  
11 yellow line that's in the hole on kind of the left-hand side in  
12 the middle.  What is that?

13          A.    That's the service line going to the meter set in the  
14 picture here.

15          Q.    That's the service line that was hit?

16          A.    Yep.

17          Q.    And the equipment that we see on site, whose equipment  
18 is that?

19          A.    I believe it to be Darwin Toof's.

20          Q.    And what do we see?  What type of equipment is that  
21 that we see?

22          A.    Mini excavator.

23          Q.    And if we could move to the next page, page seven, and  
24 I know some of these photographs maybe are similar, but  
25 specifically what do we see in this top photograph on page

1 seven?

2 A. You can see where that service line ties in to the gas  
3 line coming into the property and going over to where the  
4 damage occurred.

5 Q. Okay.

6 A. Along with the marker posts indicating the damage and  
7 where the locate was.

8 Q. And so there are some coloring kind of on the bottom  
9 of the page. What is that?

10 A. That's the location of the gas line that the locate  
11 put down.

12 Q. So when you referenced earlier in one of the  
13 photographs the circle, that's the circle that you were talking  
14 about?

15 A. Yep.

16 Q. And so this is just a closer up picture of that,  
17 correct?

18 A. Yes.

19 Q. And then the photograph on the bottom of that same  
20 page.

21 A. I believe that's just showing the damage to the gas  
22 line, yeah. Yep.

23 Q. And so obviously you have a measurement tool there,  
24 and so in terms of the review that you completed, where was the  
25 damage in relationship to the markings?

1           A.    I would say just under 12 inches from the locate to  
2 where the gas line is.

3           Q.    Okay.  And again in that picture in the middle of the  
4 picture, we see kind of a yellow line, that is the service line  
5 at issue?

6           A.    Yes.

7           Q.    And then if we could go to page eight, and if you  
8 would just describe these photographs.  I know similar in  
9 nature.

10          A.    Just a close up picture of the previous, getting a  
11 little closer to the gas line.

12          Q.    And we are talking about the top picture on page  
13 eight?

14          A.    Yes.  Just a close up view of the damage.

15          Q.    And then moving on to the picture below that, same  
16 page.

17          A.    Yep.  Just reshowing the damage in relation to where  
18 the locates were.

19          Q.    Just a little bit different angle?

20          A.    Yep.

21          Q.    And then finally the last set of pictures on page  
22 nine.

23          A.    That's right above the damage to the gas line.

24          Q.    Pardon me?

25          A.    I said it's just up close shots.

1 Q. Again of the damage in relationship to the markings?

2 A. Yep.

3 Q. And then finally the last picture on the bottom of  
4 page nine.

5 A. Really, I think they are just trying to show the gas  
6 line in relation to the locate was accurate, within looks to be  
7 maybe eight inches or so, six to eight inches within the  
8 locate. So that's what they are trying to show here, is the  
9 accuracy of the locate.

10 Q. What other information was gathered by ELM as part of  
11 their analysis or their investigation?

12 A. Whether or not the contractor had a valid locate  
13 ticket at the time of the damage, gather some contact  
14 information, the type of work they were doing, yeah.

15 Q. Okay. As part of the analysis, do they identify  
16 possible root causes of the incident?

17 A. They do.

18 Q. And what was the root cause identified here?

19 A. Insufficient excavation practices.

20 Q. Okay. And explain that further.

21 A. Meaning that they had a valid locate ticket, but they  
22 should have, you know, pot holed and put eyes on the service  
23 line prior to digging across it and maintaining that 18 inches  
24 of separation from the underground facility with mechanical  
25 equipment.

1 Q. Okay. And so from their investigation, it revealed  
2 that they had not maintained the proper clearance; is that  
3 fair?

4 A. Yep. They were within the 18-inch tolerance zone.

5 Q. And it's your understanding that they were using an  
6 excavator to do the digging?

7 A. Yes.

8 Q. After MDU received the final report from ELM, what  
9 steps were taken after that by you?

10 A. I review the ELM report from ELM, I review our first  
11 responder or the service tech who responded to the damage,  
12 review the order that they -- their paperwork they submit with  
13 it, review the locate tickets, make sure it was valid at the  
14 time of the damage.

15 Q. And based upon the review of those items, did you  
16 ultimately elect to file a complaint regarding this incident?

17 A. Yes.

18 Q. And I want to hand you what's been marked as MDU  
19 Exhibit No. 1. Mr. Christensen, would you please identify this  
20 document.

21 A. The complaint submitted to the 811 board.

22 Q. Okay, and you indicated that you personally submitted  
23 the complaint?

24 A. Yes.

25 Q. And is it a true and correct copy of the complaint

1 that was filed by you with South Dakota One Call?

2 A. Yes.

3 MS. RITER-RAPP: Your Honor, I would move to admit  
4 Exhibit No. 1 at this time.

5 HEARING EXAMINER: Any objection, Mr. Toof?

6 MR. TOOF: Well, I object, the only I think I object  
7 to is nobody -- I told everybody I work for another company,  
8 and I was digging for that other company, and everything just  
9 relates to my name. It has the name of the company, it's not  
10 Darwin Toof. I was digging for the trailer park, the owner of  
11 the trailer park. I mean, I'm the maintenance man, I just want  
12 to -- that's the only thing that's wrong in that exhibit is  
13 what I'm saying.

14 HEARING EXAMINER: Okay.

15 MR. TOOF: I don't know if anybody wants to know the  
16 name of that company or not, I don't know.

17 HEARING EXAMINER: You know what, we are going to take  
18 that into account and --

19 MR. TOOF: I'm just saying --

20 HEARING EXAMINER: We will leave that in the record  
21 and we will ask a few questions about that in a minute.

22 MR. TOOF: Okay.

23 HEARING EXAMINER: I'm going to mark -- or MDU 1 will  
24 be admitted.

25 EXHIBITS:

1 (MDU Exhibit No. 1 received into evidence.)

2 Q. (BY MS. RITER-RAPP) Mr. Christensen, when was the  
3 complaint filed in relationship to this incident with One Call?

4 A. October 30th of 2020.

5 Q. Okay, and what information did you provide in your  
6 complaint with the One Call Board?

7 A. I provided the ELM investigation report and I believe  
8 a locate ticket.

9 Q. And there are obviously a series of questions that are  
10 kind of generated as part of the complaint that you are tasked  
11 with responding or that you responded to?

12 A. Yep.

13 Q. And so included in the complaint, it says name of  
14 excavator/facility operator, and it says Darwin Toof. Do you  
15 see that?

16 A. Uh-huh.

17 Q. And so --

18 A. Yes.

19 Q. How is that information generated?

20 A. I input that information.

21 Q. No, I know, but how do you determine who the excavator  
22 was?

23 A. By the locate ticket and the ELM investigation.

24 Q. Okay. So when you say by the locate ticket, so help  
25 me understand the process then when a locate ticket is issued.

1           A.    When the excavator submits a locate ticket, it will  
2 have all their contact information in a sense, name, number,  
3 email if they provide it, an address.

4           Q.    So the contractor is responsible for completing that  
5 form?

6           A.    Calling in a locate, yes.

7           Q.    Right, but then the information that's included in it,  
8 that is generated by the contractor in the information they  
9 provide?

10          A.    In the locate ticket, yes.

11          Q.    Yeah, I mean, that's what I'm trying to establish, is  
12 how that locate ticket is generated. How do we know who the  
13 contractor is?

14          A.    Sure, yep. The contractor provides all that  
15 information in the locate ticket.

16          Q.    Okay. So then the locate ticket is issued to the  
17 contractor that applied for it essentially?

18          A.    Yep, who submitted it.

19          Q.    And so one of the pieces of information that you would  
20 review to determine who the excavator was was who the locate  
21 ticket was issued to?

22          A.    Yes.

23          Q.    Okay. As part of the complaint process, were you  
24 directed to provide information regarding possible violations  
25 of the law that had occurred?

1 A. Yes.

2 Q. And in this particular instance, what violations of  
3 the law did you allege occurred? I'd like to go through them  
4 separately.

5 A. Okay.

6 Q. If you would discuss the first one.

7 A. The location of underground facilities, not pot holing  
8 and working within the 18-inch tolerance zone.

9 Q. So what specifically did MDU allege as it related to  
10 the minimum clearance?

11 A. Hit the gas line with mechanical means, digging within  
12 the 18-inch tolerance zone.

13 Q. And did Mr. Toof expose the facility with hand or  
14 noninvasive equipment prior to the excavation?

15 A. Not that I'm aware of.

16 Q. And I believe you indicated that the investigation  
17 revealed that he used a mini excavator to expose the line?

18 A. Yeah.

19 Q. Is that correct?

20 A. Yes.

21 Q. And then as part of the complaint, there was a second  
22 violation of the law that you allege had occurred, and what was  
23 that?

24 A. An escape, escape of flammable gas, meaning the gas  
25 was blowing -- gas was blowing when the line got hit.

1 Q. So the line was damaged, gas escaped, and who did he  
2 notify?

3 A. He notified 811 and MDU. He did not notify 911, when  
4 an escape of gas is reported.

5 Q. And do you know if 911 was ultimately contacted?

6 A. I do not.

7 Q. Was there any other information that you included in  
8 the report or in the complaint to support your position?

9 A. I guess just a brief summary of what I think happened.

10 Q. What was that brief summary?

11 A. Just contractor responding to an emergency sewer leak,  
12 that he called in emergency locates, we showed up, located our  
13 facility, started to dig, and while crossing the gas line  
14 digging with his excavator, damaged the gas service line.

15 Q. And how long was that gas line out of service for?

16 A. Maybe two hours tops maybe.

17 Q. And I'm looking at your report, and it looks like  
18 there's a notation on the last page that says one customer, one  
19 hour, does that sound right?

20 A. Yeah, okay. Yeah. It wasn't very long.

21 Q. Okay. You mentioned that after an incident like this  
22 occurs, that there's a damage ticket generated; is that  
23 correct?

24 A. Correct.

25 Q. Okay. And I want to hand you or show you MDU's

1 Exhibit No. 3. Have you seen this document before, Mr.  
2 Christensen?

3 A. Yes.

4 Q. And what is this document?

5 A. This is the damage ticket that was called in.

6 Q. Okay. Go ahead.

7 A. This is the ticket that was called in after the gas  
8 line was hit.

9 MS. RITER-RAPP: Your Honor, I would move to admit  
10 Exhibit No. 3 at this time.

11 HEARING EXAMINER: Any objection, Mr. Toof?

12 MR. TOOF: No.

13 HEARING EXAMINER: No. 3 is admitted.

14 EXHIBITS:

15 (MDU Exhibit No. 3 received into evidence.)

16 Q. (BY MS. RITER-RAPP) And so who called in the damage  
17 ticket? I mean, it has information on here, but who is it that  
18 your understanding was that called it in?

19 A. Darwin Toof.

20 Q. So Mr. Toof ultimately, as you indicated, contacted  
21 811 to advise of the damage?

22 A. Yes.

23 Q. Okay, and what information or what all information is  
24 included in the damage ticket?

25 A. The location of the damage and a brief description of

1 what the damage is in regards to, which it says broken gas  
2 line.

3 Q. Okay. And I see -- I'm sorry, go ahead.

4 A. Nope. I was just saying in the remarks it tells, it  
5 describes what the damage ticket is for.

6 Q. Okay. And it looks like, as you indicated, that the  
7 line was hit in the back of Lot 29.

8 A. Uh-huh. Yes.

9 Q. And on the damage ticket, it appears that there is  
10 also information regarding the entity, it says company  
11 information on it; do you see that?

12 A. Oh, yes.

13 Q. And again there it also references Mr. Toof; is that  
14 correct?

15 A. Correct.

16 Q. And finally, Mr. Christensen, I just want to walk  
17 through the other documents that have been filed in this case.  
18 If we could go to MDU Exhibit No. 4. And have you seen this  
19 document before, Mr. Christensen?

20 A. Yes.

21 Q. And did you also receive a copy of this?

22 A. Yes.

23 Q. And when did you receive a copy of it?

24 A. Around that November, November 2nd.

25 MS. RITER-RAPP: Your Honor, I would move to admit

1 Exhibit No. 4 at this time.

2 HEARING EXAMINER: Any objection?

3 MR. TOOF: No.

4 HEARING EXAMINER: No. 4 is admitted.

5 EXHIBITS:

6 (MDU Exhibit No. 4 received into evidence.)

7 Q. (BY MS. RITER-RAPP) Mr. Christensen, did you or  
8 anyone from MDU ever receive a response from Mr. Toof in  
9 relationship to this notice?

10 A. No.

11 Q. Okay. And then again moving forward to MDU's Exhibit  
12 No. 5, did you also receive a copy of this correspondence?

13 A. Yes.

14 Q. Okay. And did you receive it on or about the time  
15 frame on the date of the letter, which is January 11th of 2021?

16 A. Yes.

17 Q. Okay. And did you receive any response from Mr. Toof  
18 in relationship to this, anything, any information from him  
19 relative to his objection regarding the complaint against him?

20 A. No.

21 MS. RITER-RAPP: Okay. Your Honor, if I didn't  
22 already, did I move to admit 5?

23 HEARING EXAMINER: No, you have not.

24 MS. RITER-RAPP: I would do that at this time.

25 HEARING EXAMINER: Any objection to No. 5?

1 MR. TOOF: That's fine.

2 HEARING EXAMINER: No. 5 is admitted.

3 EXHIBITS:

4 (MDU Exhibit No. 5 received into evidence.)

5 Q. (BY MS. RITER-RAPP) And then it appears that sometime  
6 after that Mr. Toof did request a hearing; is that correct?

7 A. Yes.

8 Q. And that's reflected in Exhibit No. 6?

9 A. Yes.

10 Q. And did you also receive a copy of it?

11 A. Yes.

12 MS. RITER-RAPP: Okay. Your Honor, I would move to  
13 admit Exhibit No. 6 at this time.

14 HEARING EXAMINER: Any objection? Mr. Toof, any  
15 objection to No. 6?

16 MR. TOOF: No, no objection.

17 HEARING EXAMINER: No. 6 is admitted.

18 EXHIBITS:

19 (MDU Exhibit No. 6 received into evidence.)

20 Q. (BY MS. RITER-RAPP) And then also as part of the  
21 complaint process, Mr. Christensen, did you receive a copy of  
22 some recommendations of the South Dakota One Call Board as it  
23 related to the allegations in your complaint?

24 A. Yes.

25 Q. And is that reflected in MDU's Exhibit No. 7?

1 A. Yes.

2 Q. And you also received a copy of that in the mail?

3 A. Yes.

4 MS. RITER-RAPP: I would move to admit MDU Exhibit No.  
5 7 at this time.

6 HEARING EXAMINER: Any objection, Mr. Toof, on No. 7?

7 MR. TOOF: No, that's fine.

8 HEARING EXAMINER: Okay, that's marked then as No. 7.

9 EXHIBITS:

10 (MDU Exhibit No. 7 received into evidence.)

11 Q. (BY MS. RITER-RAPP) Mr. Christensen, what was your  
12 understanding then of the results of the review that was  
13 conducted by the enforcement panel?

14 A. That they have reviewed it and reviewed the  
15 allegations of 811 violations and have determined a penalty.

16 Q. Okay.

17 A. Enforced.

18 Q. And so the review panel had determined that certain  
19 violations occurred and that a penalty would be imposed for  
20 those violations?

21 A. Yes.

22 Q. And then lastly, we see MDU's Exhibit No. 8. Do you  
23 recognize that document?

24 A. Yes.

25 Q. And what is that document?

1           A.     This is our order that's dispatched to our service  
2 techs when they go out to a hit line.

3           Q.     So this report was generated by MDU?

4           A.     Yep, when we are notified of the hit line.

5           Q.     Okay, so after the line is hit, MDU responds and then  
6 they gather information as part of that process?

7           A.     Yes.

8           Q.     Just generally, what information is included in the  
9 hit line report?

10          A.     Location, look at the pipe, pipe conditions, if  
11 there's any gas leaks or orders in or around the meter, they do  
12 their little investigation, mar testing, gather any contact  
13 information from the contractor that's involved, if need be,  
14 they kind of -- supposed to conduct their own little  
15 investigation themselves.

16          Q.     Okay, and so are they, I mean the service techs, are  
17 they usually out there around the same time as ELM conducts  
18 their investigation?

19          A.     Yes.

20          Q.     And so as part of the repair process, then, they are  
21 gathering information as well?

22          A.     Yes.

23          Q.     And would this be a true and correct copy of the  
24 report that was generated as it relates to this incident?

25          A.     Yes.

1 MS. RITER-RAPP: Your Honor, I would move to admit  
2 MDU's Exhibit No. 8 at this time.

3 HEARING EXAMINER: Any objection?

4 MR. TOOF: That's fine.

5 HEARING EXAMINER: No. 8 is admitted.

6 EXHIBITS:

7 (MDU Exhibit No. 8 received into evidence.)

8 Q. (BY MS. RITER-RAPP) And Mr. Christensen, was there  
9 any notations here on this report relative to what had occurred  
10 in this instance?

11 A. Just that a gas line had been hit, you know,  
12 excavator -- it indicates that a gas line was hit with a mini  
13 excavator.

14 Q. Okay. Anything further as it relates to this incident  
15 that you haven't testified to that you believe the board should  
16 know?

17 A. Not that I'm aware of.

18 MS. RITER-RAPP: Thank you, that's all the questions I  
19 have.

20 HEARING EXAMINER: Okay. Mr. Toof, do you have any  
21 questions for Mr. Christensen?

22 CROSS-EXAMINATION

23 BY MR. TOOF:

24 Q. Yeah, it's my understanding that ELM works for MDU,  
25 correct?

1 A. Yes.

2 Q. Okay, and they also investigate themselves?

3 A. Yes.

4 Q. So in other words, that's kind of a conflict of  
5 interest, isn't it?

6 A. Yes.

7 Q. If we -- yes. If we go back and review these photos,  
8 if you look real hard, then round circled one at a different  
9 angle, it's about two feet over, not one foot like you said,  
10 it's almost two feet over there because if you look at the  
11 first photo, there's a shadow on it, and then you look at the  
12 other photo where your circle is enlarged, it's like two feet  
13 over from where the angle is. So I'm just wondering why, and  
14 then it was only like, once we were in the ground, we did dig  
15 by hand too.

16 HEARING EXAMINER: I'll let you testify here in a  
17 minute, Mr. Toof. Right now it's questions for Mr.  
18 Christensen, if you have any.

19 Q. (BY MR. TOOF) Could that photograph be off by that  
20 two feet, according to the way, the angle would be set? Is it  
21 possible?

22 A. It's possible, but the damage in the picture of the  
23 locate, the line isn't a straight shot to that, is not a  
24 straight shot to where the meter set is. It kind of goes up  
25 and over and around or it looks to be like a clean out in that

1 first picture.

2 Q. Yeah.

3 A. It goes around that, I guess --

4 Q. Two feet --

5 HEARING EXAMINER: Hang on, hang on, hang on. The  
6 court reporter can only take down one person at a time; so you  
7 can't talk over each other. You can't talk over me either.

8 MR. TOOF: Okay.

9 HEARING EXAMINER: Mr. Christensen, you can respond to  
10 his question.

11 A. I guess when I was reviewing the pictures, looking at  
12 the different angles of the pictures taken, even in that first  
13 picture, it does show a shadow, but then the picture on page  
14 six, the top picture on page six of the pictures, ELM report,  
15 you can see the gas line sweeping over to where that circle  
16 was.

17 Q. (BY MR. TOOF) I don't see no yellow line there.

18 A. It's faint. You have to zoom in on it.

19 Q. Right, I did that. Because where it was marked and  
20 where it was, and you said it could have been up to a foot, and  
21 I'm thinking it was more like two feet. As you testified prior  
22 to this, you said about a foot, and I asked you if it could  
23 have been two feet, and you said, well, it could have been  
24 possible. That's all I'm saying.

25 A. Yeah. But it's not -- where the damage posts are --

1 the damage posts are in relation to the markers, it's not.

2 Q. Well, first you said it was up to close to a foot.  
3 What I say is that faint line you see there, I'm not seeing it  
4 that way, I'm seeing it where the angle of the other -- it  
5 wasn't marked right, in my opinion, because it was -- you said  
6 a foot earlier and I'm saying it was almost two feet, because  
7 of where that circle is where you have it and that direct line  
8 where it was and where it curved around is totally different,  
9 it was not a -- nothing in that line -- the clean out was over  
10 to the right.

11 MS. RITER-RAPP: Your Honor, I'm going to object.  
12 Obviously he can testify at a later time, but if he has a  
13 question, obviously I'm perfectly fine with him asking that.

14 HEARING EXAMINER: Right. Mr. Toof, any further  
15 questions?

16 MR. TOOF: No, that's it, ma'am.

17 HEARING EXAMINER: Okay. Anything further, Ms.  
18 Riter-Rapp?

19 MS. RITER-RAPP: Just briefly.

20 REDIRECT EXAMINATION

21 BY MS. RITER-RAPP:

22 Q. I want to go back to these photographs again, Mr.  
23 Christensen. And you were referencing in your testimony, and  
24 I'm looking at I believe it's page six, was it the top picture  
25 you were referencing?

1           A.    Yeah, page five and six, the top pictures of page five  
2 and six.

3           Q.    Okay.  So show us or tell us again then where the  
4 locate marks are in those photographs.

5           A.    So go left with your cursor.

6           Q.    Verbalize what you are doing so we have a record.

7           A.    Right there you are right on the yellow line and it  
8 kind of sweeps, crosses the orange line and it goes over to  
9 where that looks like a building shadow, keep going, right  
10 there is that circle over the gas line on the edge of that  
11 shadow right there that we saw on damage pictures on page  
12 seven, top photo, you can see it sweeping.  It's faint, but  
13 it's there.

14          Q.    Okay.

15          A.    I wish the yellow were better in these pictures.  That  
16 leads to the damage picture as to how it has a sweeping motion  
17 over to the mound of dirt in the background where that little  
18 yellow shovel is.

19          Q.    And then going back to then page seven, that top  
20 picture.

21          A.    Okay.

22                HEARING EXAMINER:  Codi, could you go down one  
23 picture?  Yeah, you are on six.

24          Q.    (BY MS. RITER-RAPP)  Okay, and so tell us again then  
25 what's reflected in that photograph.  What we are looking at,

1 are those the locate marks that we see in yellow?

2 A. Yep. You can see the line on the left going pretty  
3 much straight to that orange post, it says "mark" on it, right  
4 there goes straight towards it, and then you got the line in  
5 yellow and the hole with the other yellow post saying "damage"  
6 here.

7 Q. And so as I understand your testimony, it would have  
8 been no more than a foot between the damage marker and the  
9 lines, the locate lines; is that correct?

10 A. Yes.

11 Q. And it appears that it could be even less than that.

12 A. Yes.

13 MS. RITER-RAPP: Nothing further.

14 MR. TOOF: Can I ask some questions?

15 HEARING EXAMINER: Go ahead.

16 RE-CROSS-EXAMINATION

17 BY MR. TOOF:

18 Q. You see where the gas meter is, right? See where the  
19 gas meter is at the top of the picture?

20 A. Yes.

21 Q. Okay now, if you go right straight ahead of that,  
22 there's a yellow mark on the other side of the ditch, and then  
23 your yellow line turns to the right there, from the circle,  
24 it's turning to the right, your yellow line is turning to the  
25 right and there's a faint yellow right there at the edge of the

1 grass and then you cross that orange line like you did on the  
2 other previous picture, it's nowhere near there. You see what  
3 I'm talking about?

4           If you are crossing that yellow orange line again, you  
5 are way out there, and if you follow that yellow coming up  
6 across where that looks like a yellow rope or something is, it  
7 looks like it turns right there and it goes right straight up  
8 crossing that orange line to the meter. Why would it go -- I  
9 don't understand why it's circling because there was no --  
10 right there, it ends -- see that right there, then it crosses  
11 your orange right up above the clean out. That's what I'm  
12 saying, that's where it was, then you are crossing that orange  
13 line again. Do you see what I'm talking about?

14           A. I have to apologize, I don't. I have to apologize, I  
15 don't.

16           HEARING EXAMINER: Okay, I'm going -- Mr. Toof, I'm  
17 going to have you testify as to what you see later.

18           MR. TOOF: Okay.

19           HEARING EXAMINER: And about your testimony.

20           MR. TOOF: Okay.

21           HEARING EXAMINER: Any further questions for Mr.  
22 Christensen?

23           MS. RITER-RAPP: Nothing further.

24           MR. TOOF: No, that's fine.

25           HEARING EXAMINER: Okay, thank you, Mr. Christensen.

1 Mr. Toof, then we are going to turn to your testimony. I'm  
2 going to swear you in at this time.

3 Thereupon,

4 DARWIN TOOF,  
5 called as a witness, being first duly sworn as hereinafter  
6 certified, testified as follows:

7 HEARING EXAMINER: The record shall reflect the  
8 witness is sworn.

9 DIRECT EXAMINATION

10 BY HEARING EXAMINER:

11 Q. State your name for the record.

12 A. Darwin Toof.

13 Q. And Mr. Toof, I'm going to ask you a few questions  
14 just to get some basics down, and then I'm going to let you  
15 testify yourself. What is your current address, sir?

16 A. 1515 East St. Patrick Street, Lot No. 265.

17 Q. No. 265, okay, so you live in this trailer court that  
18 you worked on?

19 A. No. I live in a trailer court, where the owner of the  
20 company owns three trailer courts, and where I was digging was  
21 another trailer court, not where I live.

22 Q. Okay. That was at 815 East New York Street was where  
23 you were digging, correct?

24 A. Yes, ma'am.

25 Q. Okay, and so you worked for the trailer court?

1 A. Yes, ma'am.

2 Q. Okay, what's the name of that company?

3 A. It is -- I gotta get it right -- Countryside  
4 Property -- it's an LLC.

5 Q. Is it Countryside Estates?

6 A. Yeah, Countryside Estates, LLC.

7 Q. Okay, and they hired you as a maintenance person  
8 there?

9 A. Yeah, I'm a maintenance man there, yes.

10 Q. Okay. Now, who called in the 811 locate or who called  
11 to locate it?

12 A. I did.

13 Q. Okay. And you gave your information to the 811 when  
14 you called in, correct?

15 A. Yes, ma'am.

16 Q. Okay. And so if there was an issue --

17 A. What's that?

18 Q. Let me ask my questions and then you can answer them.

19 A. Okay.

20 Q. And then so after you call in or when you call in and  
21 give your information, you are the one that they are going to  
22 call if there's a question or if there's a delay in coming out,  
23 correct?

24 A. Yeah.

25 Q. Okay, and so you are acting as the excavator because

1 you will be excavating this location, correct?

2 A. Yes, ma'am.

3 Q. Okay. And so after you call in, there was a water  
4 leak; is that what happened?

5 A. A sewer leak. The sewer was backing up.

6 Q. And so 811 came out that same day or ELM came out and  
7 located it that same day?

8 A. Yes, ma'am.

9 Q. And tell me what happened after that, after it was  
10 located and you started digging.

11 A. Well, we started digging and we paid attention to all  
12 the utilities and everything, and we determined that the one  
13 utility, which is the orange line, was old cable so we didn't  
14 have to bother worrying too much about it because all the  
15 utilities are right on top of each other there. There's two  
16 sewers there, two clean outs, the water is right there, right  
17 there six feet below, and then of course there's the gas, and  
18 there was no electrical there at all in that location.

19 Q. Okay, so --

20 A. We started digging, I had another person with me  
21 helping, watching and everything else while I was digging, and  
22 then we knew the gas line was close so we dug some of it by  
23 hand, and then the last we had a bunch of dirt in there, it was  
24 dug loose, and I went to pick that up and that's when I hit the  
25 gas line.

1 Q. And you knew you hit it right away?

2 A. Yes, and I don't know who did say that we did not call  
3 911, because we did because they showed up, the police showed  
4 up first and then the fire department, and then MDU showed up  
5 and we -- I called 911 first, then I called 811, then I called  
6 MDU.

7 Q. Okay. And what happened after that?

8 A. Well, the police showed up first and then the fire  
9 department showed up, and then a guy from MDU showed up and he  
10 got on the phone, they were trying to locate a map to where the  
11 shutoff was or something like that or how to shut it off, and  
12 then another guy showed up from MDU and he couldn't -- they  
13 couldn't decide where the shutoff was or whatever. So then  
14 they started digging about 15 feet away to find another place  
15 to shut it off, I guess, and they found the line and pinched it  
16 off to repair it.

17 Q. Okay.

18 A. To my knowledge, that yellow mark wasn't anywhere  
19 near, I don't know if the yellow mark and the orange mark got  
20 mixed up. I can't see how I did that because I couldn't, and  
21 where it was located was in front of the hole where the mark  
22 was, and where I hit it was in the back, and it was only like  
23 three inches underground too. I didn't understand how come it  
24 shouldn't have been buried further than that too. And I didn't  
25 hit it with a backhoe, I was pulling dirt up. The force of the

1 dirt coming up is what broke it, not the backhoe physically  
2 itself, not the bucket.

3 Q. Anything else you wanted to testify about in regards  
4 to this?

5 A. Well, like I said, I was working for somebody at the  
6 time, I'm not a contractor, and I don't know, I never received  
7 the first notices because they didn't send it to No. 265. I  
8 thought they would be sending it to the office, which is the  
9 address I gave them, and for some reason, they didn't get it  
10 either. Then when I finally got the lady's number, 811 got  
11 ahold of me, and I had her get the papers that I did finally  
12 get, which were the exhibits, I think it was Exhibit 5 she gave  
13 me.

14 Q. Okay. So to your knowledge, Countryside Estates  
15 didn't get the mail either?

16 A. No. They were aware of what happened.

17 Q. Okay. Anything else, sir, you wanted to testify  
18 about?

19 A. I guess not, but just the way them pictures are, I'm  
20 pretty sure that there's -- it's going -- if you look at the  
21 different angles, it's just difference on what it was out  
22 there, and that first picture you can't even tell where it was  
23 for sure. Even if you look to the right, it's like it's more  
24 to the right than it is to the left in that shadowy first  
25 picture when they did locate it.

1 Q. Okay.

2 A. That's about all.

3 HEARING EXAMINER: Okay, Ms. Riter-Rapp, any questions  
4 for Mr. Toof?

5 MS. RITER-RAPP: Just a couple.

6 CROSS-EXAMINATION

7 BY MS. RITER-RAPP:

8 Q. You maybe covered a little bit of this, but Mr. Toof,  
9 you were the individual then that called in the locate ticket;  
10 is that correct?

11 A. Yes, ma'am, I did.

12 Q. Okay.

13 A. That's just whoever is digging, because we have other  
14 people that dig too that run the excavator and that's you only  
15 call on the location, yeah.

16 Q. But you were the excavator on this date and time,  
17 correct?

18 A. Yes, I was running the machine, yes, ma'am.

19 Q. Okay. And so you did the excavation work on that  
20 date?

21 A. Yes, ma'am.

22 Q. Okay, and you are not denying that you hit the line,  
23 correct?

24 A. Oh, no, I'm not denying that, no, unh-unh.

25 Q. And so I believe you indicated that maybe you did dig

1 a little bit by hand, but then you used the excavator to pull  
2 up the dirt; is that correct?

3 A. Yes, ma'am.

4 Q. And so it was at the time that you were using the  
5 excavator that you hit the line?

6 A. Yes, ma'am, I was using the excavator when the line  
7 got hit, yes.

8 Q. And you have the ability to call in a verification  
9 ticket if you are not confident in the location, correct?

10 A. Yeah.

11 Q. And you didn't do that this time.

12 A. Well, because the angle looked right. How did it  
13 swoop around like that didn't even make sense. Usually they go  
14 in a safe, straight line, you know, because -- and I didn't --  
15 in my recollection of anything digging, they don't usually  
16 swoop around.

17 Q. Okay.

18 A. So I had no reason to question the locate.

19 Q. But you would agree in the pictures that it reflects  
20 that the locate -- excuse me, where the damage occurred is in  
21 close relationship to where the markings were, correct?

22 A. No, I disagree with that.

23 Q. Okay.

24 A. If you look at the angles and you look close where  
25 that yellow paint is and when it crosses that orange paint and

1 everything else, no, I don't think so. If you ever seen when  
2 they locate, they swoop their wand and I don't know if one  
3 hand -- I don't know, because they missed it. Then where they  
4 even dug when they pinched the line off, they were off.

5 Q. Okay, after you hit the line, you indicated that  
6 you -- did you immediately call 911 or --

7 A. Yes, ma'am, that was the first thing that got called.

8 Q. Okay, so you specifically contacted 911?

9 A. No, the lady that was with me did.

10 Q. Who was the lady that was with you?

11 A. My fiance.

12 Q. Okay. I gotcha. Then after that, then you contacted  
13 811 after that; is that correct?

14 A. Yep. I think I might have called MDU before I called  
15 811, but I figured 811 needed to know, but I think I called MDU  
16 first before I called the locators, 811.

17 Q. So you do work like this regularly?

18 A. Not very often, maybe once every six months.

19 Q. Okay. But you know what your responsibilities are  
20 under the law in terms of an excavation and contacting the 811  
21 locate authorities?

22 A. Yeah.

23 MS. RITER-RAPP: I have no further questions.

24 HEARING EXAMINER: Committee members, do you have any  
25 questions for Mr. Toof? I do not see any questions from the

1 committee. Ms. Riter-Rapp, any further testimony or witnesses?  
2 Any rebuttal?

3 MS. RITER-RAPP: Nothing further, Your Honor.

4 HEARING EXAMINER: Okay. Well, then at this point in  
5 time the board will go into executive session and make their  
6 decision on this matter, and we will come out shortly. So if  
7 you just hang on, Mr. Toof, if you just hang on the line, we  
8 will put everyone or the committee members will go away into  
9 another room and then we will come back when they have made  
10 their decision.

11 MR. TOOF: Okay.

12 (Whereupon, the hearing was in recess at 3:10 p.m.,  
13 and subsequently reconvened at 3:25 p.m., and the following  
14 proceedings were had and entered of record:)

15 HEARING EXAMINER: I believe we are all back or will  
16 be back here soon.

17 MR. TOOF: You ready for me? I'm sorry.

18 HEARING EXAMINER: No, you are fine. We will be back  
19 on the record in this matter. We are back on the record and is  
20 there a motion from the board?

21 MR. KAISER: This is Dan Kaiser. I'll make a motion  
22 that this complaint be dismissed due to the fact that it was  
23 filed against the wrong entity.

24 HEARING EXAMINER: Is there a second?

25 MR. RAVE: I second that.

1 COURT REPORTER: Can I ask who that was?

2 HEARING EXAMINER: Any discussion on the motion?

3 MR. JANDREAU: I will simply add that through our  
4 discussions, it was my finding or my belief that 911 was  
5 called, and that was the second complaint; so in addition to  
6 the wrong entity being brung to task, it did appear that 911  
7 was called.

8 MR. RAVE: Correct.

9 HEARING EXAMINER: That was Mr. Rave who said  
10 "correct" and the motion was made by Dan Kaiser, it was  
11 seconded by?

12 MR. RAVE: Lloyd.

13 HEARING EXAMINER: Lloyd Rave, okay. With that, Ms.  
14 Gregg, if you could take roll call vote on the motion.

15 MS. GREGG: So the motion before the panel is to  
16 dismiss the complaint. All in favor. Fay Jandreau.

17 MR. JANDREAU: Aye.

18 MS. GREGG: Dan Kaiser.

19 MR. KAISER: Aye.

20 MS. GREGG: Jim Scull.

21 MR. SCULL: Aye.

22 MS. GREGG: Loren Beld.

23 MR. BELD: Aye.

24 MS. GREGG: Steve Mohr.

25 MR. MOHR: Aye.

1 MS. GREGG: Lloyd Rave.

2 MR. RAVE: Aye.

3 MS. GREGG: Ed Anderson.

4 MR. ANDERSON: Aye.

5 MS. GREGG: Bleau LaFave.

6 MR. LAFAVE: Aye.

7 MS. GREGG: Mark Meier.

8 MR. MEIER: No. Nay.

9 MS. GREGG: Okay.

10 HEARING EXAMINER: It's eight to one, and with that,  
11 this complaint has been dismissed. Is there anything more  
12 before this body in regards to this case?

13 MR. KAISER: This is Dan Kaiser, and I want to address  
14 MDU per our discussion in our room. I think as you file these  
15 complaints, you need to do a better job of investigating and --  
16 it was certainly determined that, in our opinion, 911 was  
17 called. And the complaint process doesn't go to the individual  
18 excavator, unless they are an independent contractor working  
19 alone, it goes against the company, and that's why we have  
20 elected to dismiss this. You are certainly entitled to file a  
21 complaint against the owner of the trailer park who directed  
22 the excavation, and those are the discussions that we all  
23 agreed upon.

24 HEARING EXAMINER: Okay. Anything further? Hearing  
25 none, thank you much for appearing here today. We will be off

1 the record in this matter and an order of dismissal will be  
2 sent to the parties. I'd like to thank the board for appearing  
3 here today.

4 (Whereupon, the proceedings were concluded at 3:30  
5 p.m.)

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STATE OF SOUTH DAKOTA     )  
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COUNTY OF HUGHES         )

I, Carla A. Bachand, RMR, CRR, Freelance Court Reporter for the State of South Dakota, residing in Pierre, South Dakota, do hereby certify:

That I was duly authorized to and did report the testimony and evidence in the above-entitled cause;

I further certify that the foregoing pages of this transcript represents a true and accurate transcription of my stenotype notes.

Dated this 12th day of May 2021.

\_\_\_\_\_  
Carla A. Bachand, RMR, CRR  
Freelance Court Reporter

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