

ONE CALL NOTIFICATION BOARD
THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT
FILED BY RCS CONSTRUCTION, RAPID
CITY, SD AGAINST MONTANA
DAKOTA UTILITIES, RAPID CITY, SD,
FOR AN INCIDENT OCCURRING ON
DECEMBER 16, 2020 AT 1636 E. ST
PATRICK STREET, RAPID CITY, SD.

**OC20-093
OHE 21-06**

**AMENDED
NOTICE OF HEARING**

On December 22, 2020, the South Dakota One Call Board received a Complaint filed by R.C.S. Construction, Inc. (herein "Claimant"), against Montana-Dakota Utilities Co. (herein "Respondent"), for an incident occurring on December 16, 2020, at 1636 E St Patrick Street, Rapid City, SD. The Complaint alleges a violation SDCL 49-7A-8 when Respondent failed to mark the location of the underground facilities within eighteen (18) inches horizontally of a two-inch (2") gas line.

A copy of the Complaint was sent to Respondent on December 22, 2020. The deadline to respond was January 14, 2021. Respondent had answered the Complaint as of January 13, 2021 and does dispute that a violation of South Dakota One Call law occurred. Respondent alleges the locating contractor located the pipeline in question by utilizing electronic locating equipment, mapping, and on-site inspection in a manner that was believed to be accurate and in fulfillment of 49-7A-8.

On January 29, 2021, the Enforcement Panel (herein "Panel") convened pursuant the authority present in SDCL 49-7A. The Panel does find probable cause that an intentional violation of SDCL 49-7A-8 occurred.

The panel assessed a \$5,000 penalty and suspended \$3,000 if the respondent met conditions as set by the panel. On February 11, 2021, the panel recommendation was sent to the Complainant and Respondent. On March 3, 2021, Respondent filed a request for hearing.

The board has jurisdiction over this matter pursuant to SDCL Chapter 49-7A, ARSD Chapter 20:25, and SDCL Chapter 1-26.

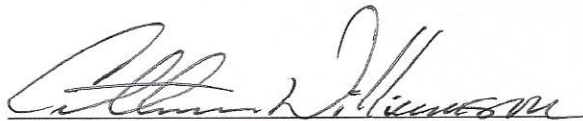
A hearing on this matter shall be held on May 20, 2021, from 10:30 a.m. to 12:00 p.m. CDT or until such time as the Board requires. The hearing will be conducted via Zoom. The Office of Hearing Examiners will preside over the meeting. All persons testifying will be subject to cross examination by the parties.

The issues to be heard at the above date and time shall be: (1) whether Montana-Dakota Utilities Co. failed to mark the location of the underground facilities within eighteen inches horizontally of a two-inch gas line and (2) if Montana-Dakota Utilities Co. had such a failure, 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 Montana-Dakota Utilities Co. 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 28th day of April, 2021.



Catherine S. Williamson
Chief Hearing Examiner
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CERTIFICATE OF SERVICE

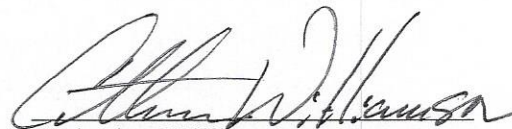
The undersigned, Catherine Williamson, hereby certifies that on the 28th day of April, 2021, a correct and true copy of the Amended Notice of Hearing was filed and served via email and/or first-class mail, postage prepaid in the above-captioned action to the following at:

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Catherine Williamson
Office of Hearing Examiners