

BEFORE THE SOUTH DAKOTA
ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT
FILED BY CENTURYLINK, SIOUX
FALLS, SD AGAINST WINTER
CONTRACTING, LLC., VOLGA, SD FOR
AN INCIDENT OCCURRING ON JUNE 8,
2021 AT 33RD STREET AND MINNESOTA
AVENUE, SIOUX FALLS, SD.

**ENFORCEMENT PANEL
RECOMMENDATION TO THE SOUTH
DAKOTA ONE CALL BOARD**

OC21-007

On June 10, 2021, the South Dakota One Call Notification Board received a Complaint filed by CenturyLink Communications, LLC (herein "Claimant"), against Winter Contracting LLC (herein "Respondent"), for an incident occurring on June 8, 2021, and June 10, 2021, at 33rd and Minnesota Avenue, Sioux Falls, South Dakota. The Complaint alleges violations of SDCL 49-7A-10 and 49-7A-12 when Respondent negligently cut the duct systems for Claimant's services to avoid having to work around the duct systems.

A copy of the Complaint was sent to Respondent on June 16, 2021. The deadline to respond to the Complaint was July 8, 2021. Respondent has answered the Complaint as of July 8, 2021. Respondent does dispute that violations of South Dakota One Call law occurred. Respondent alleges locates were called but no markings were provided.

On July 22, 2021, the Enforcement Panel (herein "Panel") convened pursuant to the authority present in SDCL 49-7A. The Panel determined additional information was needed. An additional information request was made on October 12, 2021. Claimant and Respondent responded to the request on November 2, 2021.

On November 4, 2021, the Panel reconvened pursuant to the authority present in SDCL 49-7A. The Panel does find probable cause that unintentional violations of SDCL 49-7A-12 occurred on June 8, 2021, and June 9, 2021. SDCL 49-7A-10 is not a statute that the Panel will rule on. Therefore, the Panel recommends the violation of SDCL 49-7A-10 be dismissed.

Based upon the evidence presented in the filings, the Panel recommends a penalty of \$750 with \$500 suspended for the violation of SDCL 49-7A-12 and a penalty of \$750 with \$500 suspended for the second violation of SDCL 49-7A-12 for a total penalty of \$1,500 with \$1,000

suspended upon the conditions listed below. The conditions for the suspended penalty are as follows:

1. Respondent must not be found guilty of a One Call violation within twelve (12) months of the Board Order being issued.
2. The penalty payment of **\$500** must be made to the **South Dakota One Call Notification Board, P.O. Box 187, Rapid City, SD 57709** within.
3. Respondent must attend a Damage Prevention meeting in 2022.
4. Respondent must conduct an in-house safety meeting to discuss South Dakota One Call laws. Detail of the discussion material, date, and length of the meeting along with printed and signed names of attendees will be submitted to the Executive Director of South Dakota One Call within thirty (30) days of the Board Order being issued.
5. Respondent will arrange a face-to-face meeting with Claimant to review the damage, dangers while working around utilities, and safe practices. This meeting is to take place within thirty (30) days of the Board Order being issued.

If any of the above conditions are not met, the suspended penalty (**\$1,000**) becomes immediately due and payable to **South Dakota One Call Notification Board, P.O. Box 187, Rapid City, SD 57709**.

The Panel recommends the South Dakota One Call Notification Board accept its findings and recommendations herein. If either party to this Complaint disagrees or objects to the recommendations or findings herein, a hearing may be requested. To request a hearing, a party must reply within twenty (20) days from the date of service of this notice. Failure to request a hearing is considered acceptance of the recommendations and findings herein.

The South Dakota One Call Notification Board has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-7A and ARSD 20:25.