

MINUTES

**South Dakota One Call Notification Board
Enforcement Panel Conference Call
Location: Heavy Constructors
4101 Deadwood Avenue, North
Rapid City, South Dakota**

Thursday, July 27, 2017 at 2:00 PM Central Time (1:00PM Mountain)

Roll Call:

Enforcement Panel Members in attendance: John Ward, Kevin Kouba, Kurt Pfeifle, Bleau LaFave, Dan Kaiser. Also Amanda Reiss, Legal Counsel and Larry Janes, Executive Director.

Other attendees:

Robin Dykstra – Lincoln Rural Water
Erin Hayes -- Midco

Order of Business:

Larry Janes provided a brief description of the Enforcement Panel process. This is a legal proceeding and that no comments by any of the parties may be taken during this call. A probable cause determination will be made based only on the written documentation received from the parties in the complaints. All parties will be given the opportunity to request a hearing before the full South Dakota One Call Notification Board, if there is disagreement with the recommendation of the Panel. If a hearing is requested, each party must be represented by legal counsel at the hearing. If a hearing is not requested, the Enforcement Panel recommendation will be presented to the South Dakota One Call Board of Directors for acceptance at the next Board Meeting. A final Order will be mailed to each party.

The Enforcement Panel of the South Dakota 811 Board met by conference call to consider the following South Dakota 811 Complaints:

OC17-010 – In the matter of the Complaint filed by Midco (Midco), Sioux Falls, South Dakota against Underground Communications (Underground), Waupaca, Wisconsin, for an incident occurring May 27, 2017 at 2302 10th Avenue, SW in Watertown, South Dakota.

On June 1, 2017, Midco filed a complaint alleging Underground failed to expose marked utilities.

The response deadline for Underground was June 22, 2017. Underground responded June 14, 2017. Underground responded by stating this was a clerical error.

There have been 6 previous complaints filed against Underground in 2017. The Panel met on June 16, 2017 to rule on each of them.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that there is probable cause Underground violated any statute or rule under the jurisdiction of the Board, and if so shall a civil penalty be assessed?

Probable Cause Discussion:

Dan Kaiser made a motion that there is probable cause that Underground violated SDCL 49-7A-8. Kurt Pfeifle seconded the motion. **Motion carried unanimously on a roll call vote.**

Discussion of Intent:

Dan Kaiser made a motion that this was an intentional violation. John Ward seconded the motion. **Motion carried unanimously on a roll call vote.**

Penalty Discussion:

Dan Kaiser made a motion to assess a penalty in the amount of \$1,600 with \$750 suspended. In addition, Underground must not be found guilty of a One Call violation within 12 months of the final Board Order, the penalty payment must be made within 30 days of the final Board Order, Underground must attend a Damage Prevention meeting in 2017, and Underground 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 the printed and signed names of attendees shall be submitted to the Executive Director of South Dakota One Call within 30 days of the final Board Order. If any of these conditions are not met, the entire amount will be immediately due and owing. Bleau LaFave asked why this would be a different amount than previous penalty amounts against Underground. Dan Kaiser, then amended his motion to \$1,600 penalty with \$1,000 suspended. Bleau LaFave seconded the motion. **Motion carried unanimously on a roll call vote.**

OC17-011 – In the matter of the Complaint filed by Midco (Midco), Sioux Falls, South Dakota against Underground Communications (Underground), Waupaca, Wisconsin, for an incident occurring June 1, 2017 at 424 2nd Street SW in Watertown, South Dakota.

On June 1, 2017, Midco filed a complaint alleging Underground failed to expose marked utilities.

The response deadline for Underground was June 22, 2017. Underground responded June 14, 2017. Underground responded by stating this was a clerical error.

There have been 6 previous complaints filed against Underground in 2017. The Panel met on June 16, 2017 to rule on each of them.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that there is probable cause Underground violated any statute or rule under the jurisdiction of the Board, and if so shall a civil penalty be assessed?

Probable Cause Discussion:

Kurt Pfeifle made a motion that there is probable cause that Underground violated SDCL 49-7A-8. Dan Kaiser seconded the motion. **Motion carried unanimously on a roll call vote.**

Discussion of Intent:

Dan Kaiser made a motion stating this was an intentional violation. Kurt Pfeifle seconded the motion. **Motion carried unanimously on a roll call vote.**

Penalty Discussion:

Dan Kaiser made a motion to assess a penalty of \$1,600 with \$1,000 suspended. In addition, Underground must not be found guilty of a One Call violation within 12 months of the final Board Order, the penalty payment must be made within 30 days of the final Board Order, Underground must attend a Damage Prevention meeting in 2017, and Underground 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 the printed and signed names of attendees shall be submitted to the Executive Director of South Dakota One Call within 30 days of the final Board Order. If any of these conditions are not met, the entire amount will be immediately due and owing. Kevin Kouba seconded the motion. **Motion carried unanimously on a roll call vote.**

OC17-013 – In the matter of the Complaint filed by Lincoln County Rural Water System (Lincoln), Harrisburg, South Dakota against Elliot Construction (Elliot), Yankton, South Dakota for an incident occurring June 5, 2017 at 473rd Avenue and 271st Street in Sioux Falls, South Dakota.

On June 9, 2017, Lincoln filed a complaint alleging Elliot damaged utilities while boring.

The response deadline for Elliot was June 29, 2017. Elliot responded on June 28, 2017. Elliot responded potholing was done, but the waterline was mismarked by five to six feet along the entire area.

There have been no previous complaints filed against Elliot.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that there is probable cause Elliot violated any statute or rule under the jurisdiction of the Board, and if so shall a civil penalty be assessed?

Probable Cause Discussion:

John Ward made a motion stating there was no probable cause that a violation occurred and that the Complaint should be dismissed. Dan Kaiser seconded the motion. Motion passed on a roll call vote with John Ward, Kevin Kouba, Bleau LaFave, and Dan Kaiser voting in favor. Kurt Pfeifle voted against.

Motion carried on a 4 out of 5 roll call vote.

OC17-015 – In the matter of the Complaint filed by West River Cooperative Telephone Company (West River), Bison, South Dakota against North Star Construction (North Star), Spearfish, South Dakota for an incident occurring March 28, 2017 at 106 north Hwy 12, McIntosh, South Dakota.

On June 14, 2017, West River filed a complaint alleging North Star excavated within 18 horizontal inches of a marked facility.

The response deadline for North Star was July 5, 2017. North Star responded on June 21, 2017. North Star responded by stating they did extensive hand work prior to using the excavator to locate the lines.

There have been no previous complaints filed against North Star.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that there is probable cause North Star violated any statute or rule under the jurisdiction of the Board, and if so shall a civil penalty be assessed?

Probable Cause Discussion:

Dan Kaiser made a motion stating that there is probable cause that North Star violated SDCL 49-7A-8 and Administrative Rule 20:25:03:05:03. Bleau LaFave seconded the motion stating this occurred when laying the excavation back for safety. **Motion carried unanimously on a roll call vote.**

Discussion of Intent:

Bleau LaFave made a motion stating this was an unintentional violation. Kurt Pfeifle seconded the motion. **Motion carried unanimously on a roll call vote.**

Penalty Discussion:

Kurt Pfeifle made a motion to assess a \$500 penalty with \$500 suspended. In addition, North Star must not be found guilty of a One Call violation within 12 months of the final Board Order, the penalty payment must be made within 30 days of the final Board Order, North Star must attend a Damage Prevention meeting in 2017, and North Star 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 the printed and signed names of attendees shall be submitted to the Executive Director of South Dakota One Call within 30 days of the final Board Order. If any of these conditions are not met, the entire amount will be immediately due and owing. John Ward seconded the motion. **Motion carried unanimously on a roll call vote.**

OC17-017 – In the matter of the Complaint filed by Ryan White (White), Brookings, South Dakota against the City of Volga (Volga), Volga, South Dakota for an incident occurring July 5, 2017 at 101 Edman Avenue in Volga, South Dakota.

On July 5, 2017, White filed a complaint alleging Volga failed to locate within 48 hours.

The response deadline for Volga was July 26, 2017. Volga responded on July 10, 2017. Volga responded by stating it accepts full responsibility for the locate not being completed on time.

There have been no previous complaints filed against Volga.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that there is probable cause Volga violated any statute or rule under the jurisdiction of the Board, and if so shall a civil penalty be assessed?

Probable Cause Discussion:

Dan Kaiser made a motion stating there was probable cause that Volga violated SDCL 59-7A-5. Bleau LaFave seconded the motion. **Motion carried unanimously on a roll call vote.**

Discussion of Intent:

Dan Kaiser made a motion that this was an unintentional violation. This motion did not receive a second. Kevin Kouba then made a motion that this was an intentional violation. John Ward seconded the motion. **Motion passed on a 5 to 4 roll call vote with John Ward, Kevin Kouba, Bleau LaFave, and Kurt Pfeifle voting in favor. Dan Kaiser voted against.**

Penalty Discussion:

Kevin Kouba made a motion to assess a penalty in the amount of \$1,000 with \$850 suspended. In addition, Volga must not be found guilty of a One Call violation within 12 months of the final Board Order, the penalty payment must be made within 30 days of the final Board Order, Volga must attend a Damage Prevention meeting in 2017, and Volga 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 the printed and signed names of attendees shall be submitted to the Executive Director of South Dakota One Call within 30 days of the final Board Order. If any of these conditions are not met, the entire amount will be immediately due and owing. Bleau LaFave seconded the motion. **Motion carried unanimously on a roll call vote.**

Larry Janes called for a motion to adjourn. Dan Kaiser so moved. Kevin Kouba seconded. **Motion carried unanimously on a roll call vote.**

Meeting Adjourned.

Please note: This was a legal proceeding and only the written information provided by the Complainants and the written response from the Defendants were considered per SDCL 49-7A-25. No comments from either party involved in the complaint were taken during this call.

Minutes of this meeting were prepared by Larry Janes, Executive Director, South Dakota One Call Notification Board.

Larry L. Janes
Executive Director
South Dakota One Call
exedir@sdonecall.com
(605) 339-0529

