Minutes

South Dakota One Call Notification Board
Enforcement Panel Conference Call
Location: Heavy Constructors
4101 Deadwood Avenue, North
Rapid City, South Dakota
Thursday, September 28, 2017 at 2:00 PM Central Time (1:00PM Mountain)

Roll Call:
Enforcement Panel Members in Attendance: John Ward, Bleau LaFave, Kurt Pfeifle. Also in attendance: Amanda Reiss, Legal Counsel, Larry Janes, Executive Director, Codi Gregg Deputy Director.

Other Attendees:
Todd Chambers, Watertown Municipal Utilities; John Euchner, Southeastern Electric Cooperative, Inc.

Order of Business:
Codi Gregg 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 South Dakota One Call Board met to consider the following South Dakota One Call Complaints:

OC17-018 – In the matter of the Complaint filed by Southeastern Electric Cooperative, Inc., (Southeastern) in Lennox, South Dakota against A One Company Pumping and Excavating (A One), Sioux Falls, South Dakota, for an incident occurring April 19, 2017 at 27111 Independence Avenue, Ste A in Sioux Falls, South Dakota.

On August 24, 2017, Southeastern filed a complaint alleging A One was excavating without a locate ticket, working while locators were on site and continued working after hitting a utility.

The response deadline for A One was September 14, 2017. The response was received on September 14, 2017.

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

Probable Cause Discussion:
In discussing the complaint, Kurt Pfeifle asked for clarification of dates of violation and the complaint filed date. Under 49-7A-21, a complaint must be filed within 90 days of the alleged violation. The

complaint was received on August 24, 2017 with the violation occurring April 19, 2017. Per SDCL 49-7A-21, the complaint was received after 90 days of the alleged discovery. Kurt Pfeifle made a motion to dismiss the complaint, under SDCL 49-7A-21. John Ward seconded the motion. **Motion carried unanimously on a roll call vote.**

OC17-019 – In the matter of the Complaint filed by Watertown Municipal Utilities (Watertown), Watertown, South Dakota against Cable Specialists, Inc. (Cable), Sioux Falls, South Dakota for an incident occurring August 24, 2017 at 502 E Kemp Avenue in Watertown, South Dakota.

On August 25, 2017, Watertown filed a complaint alleging a violation of 49-7A-5, beginning work before the 48-hour notice. Watertown is also alleging a violation of 20:25:03:05:03, not hand excavating within 18 inches of a marked facility.

The response deadline for Cable was September 14, 2017. There has been no response.

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

Violation of 49-7A-5:

Probable Cause Discussion:

Bleau LaFave made a motion that there is probable cause that a violation of 49-7A-5 did occur. John Ward seconded the motion. **Motion carried unanimously on a roll call vote.**

Discussion of Intent:

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

Penalty Discussion:

Bleau LaFave asked if there have been any other previous complaints filed against Cable, and there have not been. Bleau LaFave made a motion to asses a penalty amount of $1,000 with $500 suspended with the following requirements: Cable 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, Cable must attend a Damage Prevention meeting in 2018 and Cable 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 30 days of the final Board Order. If any of those conditions are not met, the entire amount will be immediately due and owning. John Ward seconded the motion. **Motion carried unanimously on a roll call vote.**

Violation of ARSD 20:25:03:05:03

Probable Cause Discussion:

Bleau LaFave made a motion that there is probable cause that a violation occurred of ARSD 20:25:03:05:03. Kurt Pfeifle seconded the motion. **Motion carried unanimously on a roll call vote.**

Discussion of Intent:
Bleau LaFave made a motion that this was an intentional violation of 20:25:03:05:03. John Ward seconded the motion. **Motion carried unanimously on a roll call vote.**

Penalty Discussion:
Bleau LaFave made a motion to assess a penalty amount of $1,000 with $900 suspended for the violation with the following requirements: Cable 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, Cable must attend a Damage Prevention meeting in 2018 and Cable 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 30 days of the final Board Order. If any of those conditions are not met, the entire amount will be immediately due and owning. John Ward seconded the motion. **Motion carried unanimously on a roll call vote.**

There being no further business, Codi Gregg asked for a motion to adjourn. John Ward made the motion, Kurt Pfeifle seconded. Meeting adjourned at 2:58PM CDT.

Please note: This is a legal proceeding and only written information provided by the Complainants and the written response from the Defendants will be considered per SDCL 49-7A-25. No comments from the parties involved in the complaints will be taken during this call.

Minutes of the meeting were prepared by Codi Gregg, Deputy Director of South Dakota One Call Notification Board.