

MINUTES

South Dakota One Call Notification Board Enforcement Panel Conference Call

Tuesday, December 19, 2023 at 10AM CT (9AM MT)
This meeting was held over ZOOM.

Panel Members: Mark Meier, Kay Braaten and Loren Beld.

Also in attendance: Cody Honeywell, Legal Counsel; Codi Gregg, Executive Director; Mandy Benson; Executive Assistant.

Guests in attendance: Jim Wedin, Lumen Technologies; Chris Haiar, SDN Communications; Thomas Meyeraan, T & T Underground; Chad Egeberg, NorthWestern Energy; Janelle Finck and Renee Catron, KTM Design Solutions.

A brief description of the Enforcement Panel process: This is a legal proceeding, and no comments were taken by any of the parties involved in the Complaints during this call. A probable cause determination was made based only on the written documentation received from the parties involved 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 Board Order will be mailed to each party after that Board Meeting. Please note, no payment is due until the final order is issued.

Factors to be considered in determining the amount of the penalty, if assessed shall be:

1. The amount of damage, degree of threat to public safety and the inconvenience caused.
2. The respondent's plan and procedures to ensure future compliance with statutes and rules.
3. Any history of previous violations.
4. Other matters as justice requires.

49-7A-18. Penalties. Except as provided in § 49-7A-19 and in addition to all other penalties provided by law, any person who violates or who procures, aids, or abets in the violation of § 49-7A-2, 49-7A-5, 49-7A-8, or 49-7A-12, or any rules promulgated pursuant to § 49-7A-2, 49-7A-5, or 49-7A-8 **may be assessed a penalty of up to one thousand dollars for the first violation and up to five thousand dollars for each subsequent violation that occurs within twelve months of the initial violation.**

49-7A-19. Penalties for intentional violations. In addition to all other penalties provided by law, any person who intentionally violates or who intentionally procures, aids, or abets in the violation of § 49-7A-2, 49-7A-5, 49-7A-8, or 49-7A-12, or any rules promulgated pursuant to § 49-7A-2, 49-7A-5, or 49-7A-8 **may be assessed a penalty of up to five thousand dollars for the first violation and up to ten thousand dollars for each subsequent violation that occurs within twelve months of the initial violation.**

49-7A-20. Each violation as separate offense. **Each violation of any statute or rule of the Statewide One-Call Notification Board constitutes a separate offense. In the case of a continuing violation, each day that the violation continues constitutes a separate violation.**

The Enforcement Panel of the South Dakota One Call Notification Board is meeting to consider the following South Dakota One Call Complaints:

OC23-001 In the matter of the complaint filed by **Northern Natural Gas Company**, Omaha, NE against **UGK Communications**, Houston, TX for an incident occurring August 9, 2022 at 10 Alumni Street in Vermillion.

Deadline to Respond to second notice is December 6, 2023.

There is no previous history with UGK Communications.

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

Mark Meier opened discussion on this complaint reviewing the date the complaint was filed. This complaint was filed January 18, 2023, more than ninety days from the date of damage. For that reason, Mark Meier made the motion to dismiss the complaint under SDCL 49-7A-21. Loren Beld seconded the motion to dismiss. **Motion carried upon a role call vote.**

OC23-002 In the matter of the complaint filed by **City of Rapid City**, Rapid City, SD against **KTM**, Rapid City, SD for an incident occurring March 3, 2023 at East Philadelphia / East Anamosa Streets in Rapid City.

Deadline to Respond to second notice is December 6, 2023. Response was received December 8, 2023.

There is no previous history with KTM.

As May Adam is working to resolve a conflict of interest, this complaint will be moved to January 19, 2024 to be heard by the Enforcement Panel. KTM was made aware of this decision prior to the start of today's call.

OC23-003 In the matter of the complaint filed by **City of Rapid City**, Rapid City, SD against **KTM**, Rapid City, SD for an incident occurring March 14, 2023 at Dyess Avenue / Country Road in Rapid City.

Deadline to Respond to second notice is December 6, 2023. Response was received December 8, 2023

There is no previous history with KTM.

As May Adam is working to resolve a conflict of interest, this complaint will be moved to January 19, 2024 to be heard by the Enforcement Panel. KTM was made aware of this decision prior to the start of today's call.

OC23-005 In the matter of the complaint filed by **Jeff Stice**, Sioux Falls, SD against **Unknown**, Sioux Falls, SD for an incident occurring April 22, 2023 at 41st and 42nd Avenue on Philips Avenue in Sioux Falls.

Deadline to Respond is December 6, 2023.

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

Loren Beld opened discussion on this complaint stating this is not a South Dakota One Call issue. Kay Braaten agreed as the work being completed was aerial and no excavation was occurring. South Dakota One Call does not have the authority to investigate. Therefore, Mark Meier made the motion to dismiss the complaint. Loren Beld seconded the motion. **Motion carried unanimously upon roll call vote.**

OC23-007 In the matter of the complaint filed by **Accurate Locating Service**, Rapid City, SD against **CCS**, Black Hawk, SD for an incident occurring July 24, 2023 at Hwy 1416 on Philips Avenue in Sioux Falls.

Deadline to Respond was December 6, 2023. Response was received on November 1, 2023.

There is previous history with CCS.

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

Loren Beld opened discussion, having a hard time seeing locates in the documentation provided. Loren felt flags should have been used in the tall grass. Kay Braaten stated she did not believe this area was adequately marked, and agreed flags were needed. Mark Meier added there was a lack of evidence provided to prove this excavation site was adequately located. Loren Beld made the motion to dismiss the complaint. Kay Braaten seconded the motion. **Motion carried unanimously upon a roll call vote.**

OC23-009 In the matter of the complaint filed by **NorthWestern Energy**, Brookings, SD against **T & T Underground**, Windom, MN for an incident occurring September 26, 2023 at 1190 Pelican Point Road in Madison.

Deadline to Respond was December 7, 2023. Response was received December 5, 2023.

There is no previous history with T&T Underground.

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

The Panel held discussion on the complaint, discussing potholing and the need to expose facilities. Mark Meier stated he believed the depth of the utility was checked with a locator, which can be deceiving. Loren Beld agreed, tracer wire can be a couple of inches above a utility. Loren Beld made the motion that probable cause did exist in the violation of SDCL 49-7A-8. He also stated that a violation of 49-7A-12 also occurred but was not listed by NorthWestern Energy. Under South Dakota state laws, damages are to be reported to the 811 Center immediately. Loren Beld continued his motion, adding that a penalty should be assessed in the amount of \$1,500 with \$750 suspended with T & T Underground meeting the conditions listed below:

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 \$750 must be made to the South Dakota One Call Notification Board, PO Box 187, Rapid City, South Dakota 57709 within thirty (30) days of the Board Order being issued.
3. Respondent must attend a Damage Prevention meeting in 2024.
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. The meetings is to take place within thirty (30) days of the Board Order being issued.

Kay Braaten seconded the motion. **Motion carried unanimously upon a roll call vote.**

OC23-013 In the matter of the complaint filed by **Magellan Midstream Partners LP**, Tulsa, OK against **Eric Nelson**, Edgemont, SD for an incident occurring October 27, 2023 at Indian County Road and County Road 65 in Edgemont.

Deadline to Respond was December 7, 2023. Response was received November 22, 2023.

There is no previous history with Mr. Eric Nelson.

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

Loren Beld opened discussion on the complaint stating the homeowner did not believe the call was needed as he was working on his own property. Loren Beld identified the dangers of working around a pipeline. The Panel believed Mr. Nelson learned his lesson regarding the potential dangers of not calling 811 prior to excavation. Loren Beld made the motion that probable cause did exist in the violation of 49-7A-5, the violation was unintentional and recommended a penalty in the amount of \$1,500 with \$750 suspended with Mr. Nelson meeting the conditions listed below:

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 \$750 must be made to the South Dakota One Call Notification Board, PO Box 187, Rapid City, South Dakota 57709 within thirty (30) days of the Board Order being issued.

3. Respondent must attend a Damage Prevention meeting in 2024.

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. The meetings is to take place within thirty (30) days of the Board Order being issued.

Loren Beld seconded the motion. **Motion carried unanimously upon a roll call vote.**

Having no further business, Loren Beld made the motion to dismiss. Kay Braaten seconded the motion. Motion carried unanimously upon a roll call vote. Call adjourned at 10:48AM CT.

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