

# Minutes

## (Draft / Unapproved Circulated March 9, 2021)

February 19, 2021 - 9:00 AM Central Time / 8:00 AM Mountain Time

1. Chairman Fay Jandreau called the meeting to order at 9:00 AM CT. The meeting was held over ZOOM.

Board Members: Chairman, Fay Jandreau, Representing Telecommunication Companies Offering Local Exchange Service to Less Than 50, 000 Customers;  
Jim Scull, Representing Excavation Contractors;  
Steve Mohr, Representing Community Antenna Television Systems;  
Bleau LaFave, Representing Investor-Owned Natural Gas Utilities;  
Ed Anderson, Representing Rural Electric Cooperatives;  
Kevin Kouba, Representing Investor-Owned Electric Utilities;  
Lloyd Rave, Representing Rural Water Systems;  
Mark Meier, Representing Municipalities;  
Loren Beld, Representing Excavation Contractors;

Board Members unable to attend:

Vice Chairman, Doug Larson, Representing Interstate Carriers of Gas or Petroleum;  
Dan Kaiser, Representing Telecommunication Companies Offering Local Exchange Service to More Than 50,000 Customers;

Also in attendance:

Brett Koenecke, Legal Counsel;  
Cody Honeywell, Legal Counsel;  
Larry Janes, Executive Director;  
Codi Gregg, Deputy Director.

Guests in Attendance:

Callie Iverson, Take Charge Bookkeeping;  
Scott Sasajima, Texas 811;  
Richard Ferguson, USIC;  
Keely Hosmann, NuStar Energy;  
Mary Zanter, PUC Pipeline Safety;  
Jay Stephens, Damage Prevention Academy;  
From Montana Dakota Utilities: Toby Bordewyk, Michael Schoepp; Brandon Lance.

2. Mark Meier made the motion to approve the November 17, 2020 Board Meeting Minutes. Bleau LaFave seconded the motion. Motion carried unanimously.
3. After reviewing expenditures and income, Jim Scull made the motion to approve the Financial Report. Kevin Kouba seconded the motion. Motion carried unanimously.

4. Operations - South Dakota 811 and Texas811 Performance Results
  - a. Incoming Locate Requests History was reviewed. There was a difference of 22,914 tickets submitted to the Center in 2020 compared to 2019. This is the largest increase in tickets submitted South Dakota One Call has seen.
  - b. Outgoing Ticket History was discussed. The difference between 2019 and 2020 is the second highest in South Dakota One Call history at 116, 533. The largest gain occurred between 2010 and 2011 at 163,883 tickets.
  - c. Ratio Outgoing to Incoming Tickets was the second lowest ratio of outgoing to incoming, at 4.99%.
  - d. Electronic Ticketing was revised to show 44% of tickets submitted occurs through Portal Entry. 87,113 tickets were submitted and mapped by the excavator.
  - e. Secondary Links shows how many tickets are submitted to more than one contact in a company. This continues to rise. There were 210,907 tickets that were submitted to secondary links in 2020.
  - f. Speed of Answer was reviewed and is within contract limits.
  - g. Dispatched Tickets by Type for January 2021 was reviewed. In thirty-one days, 267 emergency tickets were submitted, 47 damages reports and 636 times a contractor or homeowner was working near a high profile facility. 4,202 locates were submitted in January.
  - h. There were fourteen damages without previous ticket #'s reported in January.
  - i. Damages with Ticket #'s vs. without Ticket #'s has stayed consistent at one third of damages reported not having a previous ticket number.
  - j. Gas Damages - Monthly & Year to Year Comparison was discussed. In 2020, there were 223 reported gas damages to the Center. In total, 1,676 damages were reported for the year.
5. Toby Bordewyk, Montana Dakota Utilities Company, asked for a discussion regarding complaint filings and damage prevention. MDU is looking for suggestions by the Board on how to reduce damages, and when the Board feels it is appropriate to file a complaint. MDU provided the Board a presentation of damages region wide, activity in the Black Hills area and future plans. There was an extensive conversation between the Board and MDU on best practices, actions and suggestions by the Board. Damages to gas lines is dangerous and will require everyone to work together. As discussed, the actions are not all the fault of the excavator, shallow lines, grade changes and terrain all play a part in the damage of facilities. The Board of Directors and MDU both agreed there is an issue that needs to be addressed and cooperation by all involved is the best way to work towards a resolution. This does not rest solely on one entity. In order to facilitate better working conditions for all parties, relationships need to be repaired and discussions had on safe practices. The Board thanked MDU for volunteering to provide their presentation, time and opening the discussion. No action was taken. The Board of Directors and South Dakota One Call will continue to work with all utilities on damage prevention and safe practices.
6. Richard Ferguson, USIC, presented using pink flags on Difficult-to-Locate/Project Locate Flag. The idea of this larger flag is to get the attention of the excavator that the locate is not completed and further communication between parties is needed, and would provide the contact information for the locator. The Board feels this is a good communication tool, but not an 811 issue. No action was taken.

7. The South Dakota One Call Board was authorized by the Appropriations Committee in FY20 to offer up to \$20,000 in scholarships to students at the South Dakota Technical Institutes in areas of study involved in excavation. These scholarships are offered in conjunction with industry partners and the Build Dakota Scholarship fund. Jim Scull opened the conversation in favor of continued support of the scholarships. The need for skilled workers will continue to grow and the scholarships help facilitate that need. Jim Scull made the motion to continue the support of the scholarships as an annual event. Steve Mohr seconded the motion. **Motion carried unanimously.**
8. Jay Stephens of Damage Prevention Academy presented to the Board of Directors the potential South Dakota 811 Certification program. The learning management system would offer excavators an online platform to learn 811 content developed by South Dakota One Call. The certification program will be used in enforcement actions as well. Ed Anderson made the motion for One Call to proceed with proposed framework and quote. Steve Mohr seconded the motion. **Motion carried unanimously.**
9. Review of the website re-design costs was covered. In order to the move the volume of documents housed on the current website to the new, our developer has asked for additional funds. The additional costs would be \$2,000. Kevin Kouba asked if anyone had a similar experience or if anyone was familiar with those additional type costs. Scott Sasajima with Texas 811 stated he was expecting a similar fee with their new website as well. No board members had a cost example for comparison. The document transfer is necessary for the website to be completed. Kevin Kouba made the motion to approve the expenditure. Lloyd Rave seconded the motion. **Motion carried unanimously.**
10. The Enforcement Panel of the South Dakota One Call Board met on the following Complaints and issued Recommendations. Today shall the One Call Board accept the recommendations of the Enforcement Panel, and shall the One Call Board close the Dockets, and shall the Board pursue collection activity if the requirements are not met? Mark Meier made the motion to approve the recommendations of the Enforcement Panel, with Jim Scull abstaining from voting on the following dockets: OC20-066, OC20-073 and OC20-085 and Steve Mohr abstaining from voting on OC20-069. Lloyd Rave seconded the motion. **Motion carried.**

OC20 - 058 - In the Matter of the Complaint Filed by **Montana Dakota Utilities**, Rapid City, SD against **Swiftec, Inc.** Rapid City, SD for an incident occurring on August 24, 2020 at 2003 Provider Blvd, Rapid City, SD.

OC20 - 060 - In the Matter of the Complaint Filed by **Montana Dakota Utilities**, Rapid City, SD against **Sanford Logging**, Spearfish, SD for an incident occurring on August 26, 2020 at Crook Mountain Road, Whitewood, SD.

OC20 - 061 - In the Matter of the Complaint Filed by **Montana Dakota Utilities**, Rapid City, SD against **Underground Solutions, Inc.** Sioux Falls, SD for an incident occurring on August 27, 2020 at 704 Pahasapa Road, Rapid City, SD.

OC20 - 063 - In the Matter of the Complaint Filed by **Montana Dakota Utilities**, Rapid City, SD against **Rapid Construction, LLC.** Rapid City, SD for an incident occurring on September 10, 2020 at W Elm and Juniper Street, Black Hawk, SD.

OC20 - 066 - In the Matter of the Complaint Filed by **Montana Dakota Utilities**, Rapid City, SD against **RCS Construction**, Rapid City, SD for an incident occurring on September 12, 2020 at Mill Street and Cemetery Street, Lead, SD.

OC20 - 067 - In the Matter of the Complaint Filed by **Askland Ditching**, Rapid City, SD against **Montana Dakota Utilities**, Rapid City, SD for an incident occurring on September 11, 2020 at 3402 Ivy Avenue, Rapid City, SD.

OC20 - 068 - In the Matter of the Complaint Filed by **Askland Ditching**, Rapid City, SD against **Montana Dakota Utilities**, Rapid City, SD for an incident occurring on September 4, 2020 at 5007 Langenberg, Rapid City, SD.

OC20 - 069 - In the Matter of the Complaint Filed by **Montana Dakota Utilities**, Rapid City, SD against **Engbarth Drilling, Inc.**, Rapid City, SD for an incident occurring on September 17, 2020 at Fairview and Glendale, Lead, SD.

OC20 - 070 - In the Matter of the Complaint Filed by **Montana Dakota Utilities**, Rapid City, SD against **Geidel Excavation**, Rapid City, SD for an incident occurring on September 17, 2020 at 3682 Remington Road, Rapid City, SD.

OC20 - 071 - In the Matter of the Complaint Filed by **Montana Dakota Utilities**, Rapid City, SD against **Heavy Constructors**, Rapid City, SD for an incident occurring on September 17, 2020 at E Mall Drive, Box Elder, SD.

OC20 - 072 - In the Matter of the Complaint Filed by **Montana Dakota Utilities**, Rapid City, SD against **Wild West Construction, LLC.**, Glenrock, WY, for an incident occurring on September 21, 2020 at 317 Gold Street, Lead, SD.

OC20 - 073 - In the Matter of the Complaint Filed by **Montana Dakota Utilities**, Rapid City, SD against **Scull Construction**, Rapid City, SD for an incident occurring on September 22, 2020 at o Victory Way, Box Elder, SD.

OC20 - 074 - In the Matter of the Complaint Filed by **Montana Dakota Utilities**, Rapid City, SD against **Pedersen Excavation**, Spearfish, SD for an incident occurring on September 23, 2020 at o Katie Lane and Pine View Drive, Sturgis, SD.

OC20 - 076 - In the Matter of the Complaint Filed by **Montana Dakota Utilities**, Rapid City, SD against **CSI**, Sioux Falls, SD for an incident occurring on October 5, 2020 at 23605 Wilderness Canyon in Rapid City, SD.

OC20 - 077 - In the Matter of the Complaint Filed by **Montana Dakota Utilities**, Rapid City, SD against **Concrete Visions, LLC.**, Black Hawk, SD for an incident occurring on October 6, 2020 at 5723 Harper Court in Rapid City, SD.

OC20 - 079 - In the Matter of the Complaint Filed by **Montana Dakota Utilities**, Rapid City, SD against **Andy Coyle Construction**, Spearfish, SD for an incident occurring on October 12, 2020 at 3715 Hillsvie Road in Spearfish, SD.

OC20 - 082 - In the Matter of the Complaint Filed by **Montana Dakota Utilities**, Rapid City, SD against **Darwin Toof**, Rapid City, SD for an incident occurring on October 15, 2020 at 815 E New York Street, Lot 29 in Rapid City, SD.

OC20 - 083 - In the Matter of the Complaint Filed by **Montana Dakota Utilities**, Rapid City, SD against **All About Exteriors**, Rapid City, SD for an incident occurring on October 15, 2020 at 6767 Elmwood Street in Black Hawk, SD.

OC20 - 085 - In the Matter of the Complaint Filed by **Montana Dakota Utilities**, Rapid City, SD against **RCS Construction**, Rapid City, SD for an incident occurring on October 28, 2020 at 30 Adams Street in Deadwood, SD.

OC20 - 086 - In the Matter of the Complaint Filed by **Montana Dakota Utilities**, Rapid City, SD against **CSI**, Sioux Falls, SD for an incident occurring on October 30, 2020 at 23608 Wilderness Canyon in Rapid City, SD.

11. Kevin Kouba made the motion to accept the Offer of Resolution for the following complaints. Bleau LaFave seconded the motion. **Motion carried unanimously.**

OC20 - 084 - In the Matter of the Complaint Filed by **City of Crooks**, Crooks, SD against **Degen Electric**, Sioux Falls, SD for an incident occurring on November 3, 2020 at 47522 Pony Meadow Court in Renner, SD.

OC20 - 091 - In the Matter of the Complaint Filed by **Montana Dakota Utilities**, Rapid City, SD against **Solseth Excavating**, Rapid City, SD for an incident occurring on November 30, 2020 at 5808 Eastside Drive in Black Hawk, SD.

OC20 - 092 - In the Matter of the Complaint Filed by **Montana Dakota Utilities**, Rapid City, SD against **Jones Construction Company**, Rapid City, SD for an incident occurring on December 3, 2020 at 5630 Bing in Rapid City, SD.

12. The following Complaints were dismissed for inconsistent, incomplete, or incorrect information. Complainant was advised they may re-file. No further action was needed or taken.

OC20 - 087 - In the Matter of the Complaint Filed by **Magellan Midstream Partners**, Tulsa, OK against **Donarski Lawncare and Landscape**, Spearfish, SD for an incident occurring on November 3, 2020 at 700 through 816 Copperfield Drive, Rapid City, SD.

13. The Enforcement Panel met and made recommendations on the following Complaint Dockets. Hearings Requests have been made in the following and will be scheduled for a later date. Please note the correction. Docket OC20-070 (MDU vs Geidel Construction) was approved in the Board Orders. Geidel Construction had inquired about a hearing but did not submit a request for hearing. May Adam will work with the Office of Hearing Examiners to schedule the requested hearings. No action was taken.

OC20 - 059 - In the Matter of the Complaint Filed by **Montana Dakota Utilities**, Rapid City, SD against **Williams Service**, Lead, SD for an incident occurring on August 25, 2020 at 313 Grand Avenue, Lead, SD.

OC20 - 065 - In the Matter of the Complaint Filed by **Montana Dakota Utilities**, Rapid City, SD against **Stuen Construction**, Deadwood, SD for an incident occurring on September 10, 2020 at 14 McMaster Street, Lead, SD.

OC20 - 082 - In the Matter of the Complaint Filed by **Montana Dakota Utilities**, Rapid City, SD against **Darwin Toof**, Rapid City, SD for an incident occurring on October 15, 2020 at 815 E New York Street, Lot 29 in Rapid City, SD.

OC20 - 088 - In the Matter of the Complaint Filed by **Magellan Midstream Partners**, Tulsa, OK against **Donarski Lawncare and Landscape**, Spearfish, SD for an incident occurring on November 3, 2020 at 700 through 816 Copperfield Drive, Rapid City, SD.

OC20 - 089 - 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 November 3, 2020 at Canyon Street in Lead in Deadwood, SD.

14. Bleau LaFave reviewed the Penalty Matrix for Enforcement Panel. This matrix is a guideline and defines what is actionable, finable and suggested penalty amount. This matrix was developed by Bleau LaFave and Larry Janes. Discussion was held on assessing a penalty for a second violation and how to use the matrix. Steve Mohr made the motion to approve the matrix and its use, stating the matrix needs to be reviewed annually. Mark Meier seconded the motion. **Motion carried unanimously.**
  
15. South Dakota One Call Hearing Process. How does the Board wish to proceed on each item, 15a through 15e?
  - a. Can all Hearings appear in front of the Office of Hearing Examiners instead of the Board?

49-7A-27 states that a hearing is to be heard before the Board of Directors as a contested case under 1-26, with the Board rendering a decision. Under this law, the Board acts as the jury while the Office of Hearing Examiner facilitates the hearing.
  
  - b. Can the Board charge litigants for hearings? What is a pathway to doing this?

This is not a practice recommended for the Board.
  
  - c. Can the Board increase the penalty amount after a hearing?

Yes, The Board has the right to accept the recommendation of the Panel, to adjust the penalty amount to increase or decrease and the right to dismiss the recommendation of the Panel. It is the right of the defendant to know in advance of a hearing request that a penalty could increase or decrease in the hearing process.
  
  - d. Can the board order that we hold complaints back from the enforcement panels until the complainant meets with the excavator?

Yes, this can be addressed on the Complaint and Reply form by simply asking if the complainant has had a conversation with the respondent about actions, issues or damages prior to filing the complaint. The complaint can be vetted by the Executive Director and returned if this communication has not happened prior to filing the complaint. Lloyd Rave made the motion to require complainants to attempt to meet with and discuss the alleged incident being described in a complaint prior to filing the complaint. Loren Beld seconded the motion. **Motion carried unanimously.**
  
  - e. Can the Board require anyone requesting a hearing to tell us detailed reasons why the enforcement panel was wrong?

Yes, the Board can ask for additional information from those requesting a hearing. The document will become public record and be added to the online docket. The Board felt this would be good documentation for a defendant requesting a hearing when a response was not provided. Bleau LaFave made the motion to require a party rejecting the Enforcement Panel's recommendation to provide in written notice of rejection, a detailed explanation of why the request for hearing. This detail is to include possible defenses, factual disputes, and other detailed information relevant to the reason of rejection. Bleau LaFave further stated that any entity listed an "LLC" or corporation is to be represented by legal counsel. Mark Meier seconded the motion. **Motion carried unanimously.**

Fay Jandreau restated that the Board does have authority to act on Items A, C, D and E as stated above. Item B the Board does not have authority to act on.

16. Board member retirements was discussed. No action was taken as the Board does not feel the authority is there as all Board Members are appointed through the Governor's Office. This is a question for the Governor's Office to respond too.

17. Discussion Items:

- a. Loren Beld question on the **October 2010** - [Declaratory ruling](#) regarding how close an underground facility can be placed on either side of a marked facility and regarding facilityoperator marking the outside edge of its facility to ensure excavator maintains a minimum horizontal clearance of eighteen inches from both sides of a facility. The Board discussed the over marking of a facility as misrepresentation of locating. As the excavator, if clarification is needed contacting the utility is the best option. Marks should be a close proximity of the utility, without over marking. As always communication with the utility or the locator when there are questions.
- b. Annual Report was submitted to the Governor's Office and will be posted to Board Effect if the Board would like to review the document. This was received by the Governor's Office on time.
- c. Potential meeting dates through the remainder of 2021 were discussed. The dates will be finalized and Boards notified.
- d. Questions from an excavator:
  1. Could the 811system could be set up to automatically send an email reminder 3-4 days before the ticket expires?

Scott Sasajima from Texas 811 answered this question as the contractor for South Dakota 811. This practice is not a good one to start as it allows excavators to depend on that message instead of managing tickets as they should be. Excavators / Homeowners are reminded the ticket is valid for 21 days, as well as given the update / expiration information on the ticket. Codi Gregg agreed the responsibility is that of the excavator, and should not be a reminder supplied by South Dakota 811.
  2. Could there be an option to attach plans/ pictures/ notes when submitting the ticket in the 811 portal?

Scott Sasajima from Texas 811 answered this question. Version 3.9 of GeoCall, which is in testing, does allow for items to be uploaded with the ticket. These items will not be automatically sent out to utilities, but will be provided as a hyperlink. As this is in testing, no release date is available but this option is coming soon.
- e. Other

Mark Meier asked if there was a way to tell in GeoCall if excavators are viewing the Positive Response information. Scott Sasajima was going to check with IT to see if there was a way to view that information and get back to Mark Meier, Larry Janes and Codi Gregg.

18. No public comment was taken at this time.



19. Having no further business, Lloyd Rave made the motion to adjourn the Board of Directors meeting. Jim Scull seconded. **Motion carried unanimously.**

**ONE CALL BOARD MEETING SCHEDULE:**

Board Meeting Schedule will be provided to Board Members as soon as future dates are finalized.

**ONE CALL BOARD ENFORCEMENT PANEL SCHEDULE**

2 PM Central Time (1 PM Mountain Time) last Thursday of each month and last Friday of each month during the Legislative Session.

No Enforcement Panel Meeting will be held in February.

March meeting will be held on March 18, 2021.

**ANNOUNCEMENTS:**

Common Ground Alliance, Orlando, FL. - Rescheduled for October 12 - 15, 2021.

Texas811 Summit, February 8 - 10, 2021 - Rescheduled for November 15-17, 2021.

Materials presented at this meeting are available on the South Dakota 811 website [www.SD811.com](http://www.SD811.com) as well as the South Dakota Boards and Commissions website at <http://boardsandcommissions.sd.gov/>. They are also available by contacting the Deputy Director in writing at [deputydirector@sd811.com](mailto:deputydirector@sd811.com), or by calling (605) 863-0951.