

MINUTES

South Dakota One Call Notification Board Enforcement Panel Conference Call

Tuesday, December 17, 2024 at 1PM (12PM MT)

This meeting was hosted via ZOOM.

Panel Members: Jim Wedin, Mark Meier, Scott Wiese

Guests: Steve Barnett, South Dakota Rural Electric Association; Melissa Hansen, MDU; Brent Pingel, MDU; Joe Irwin, SiteWorks; Mark Doll, NorthWestern Energy; Matt Klein, Union County Electric Cooperative; Tyler DeNeui, Leap Communications; Jason Dabbert, Leap Communications; Robbie Veurink, Deep Foundation Group

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

A brief description of the Enforcement Panel process: This is a legal proceeding, and no comments will be taken by any of the parties involved in the Complaints during this call. A probable cause determination will be 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 met to consider the following South Dakota One Call Complaints:

OC24-022 In the matter of the complaint filed by Union County Electric Cooperative, Elk Point, SD against Siteworks, Sioux Falls, SD for an incident occurring August 22, 2024 at 0 Arnold Palmer Lane in Elk Point.

Deadline to Respond was December 5, 2024. Response was received December 13, 2024.

There is no history with Siteworks.

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

Mark Meier opened discussion by stating a single phase primary was hit. Mark asked if a violation needed to be addressed by statute and Legal Counsel provided information that the administrative rules listed are a cause of action the panel can pursue. However, 49-7A-10 is not a cause of action for the Panel.

Scott Wiese continued the discussion stating Siteworks knowingly dug when they knew there were underground facilities. Siteworks knew about the underground line but did not make any attempt to preserve the marks.

Mark Meier motioned that a violation of 20:25:03:05.02 and 20:25:03:05.03 did exist, the violation was unintentional and recommended a penalty in the amount of \$1,000 with \$250 suspended with Siteworks meeting the requirements 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. Respondents must attend a Damage Prevention meeting in 2025.
4. Respondents must conduct an in-house safety meeting to discuss South Dakota One Call laws. Details 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 meeting is to take place within thirty (30) days of the Board Order being issued.

Scott Wiese seconded the motion. **Motion carried unanimously upon a roll call vote.**

OC24-024 In the matter of the complaint filed by Leap Communications, LLC. Harrisburg, South Dakota against BX Civil & Construction, Inc. Dell Rapids, SD for an incident occurring July 16, 2024 at 43°24'03.5"N 97°10'36.2"W in Parker.

Deadline to Respond is December 13, 2024. No response has been received as of December 10, 2024.

There is no previous history with BX Civil & Construction, Inc.

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

Jim Wedin opened the discussion that BX Civil & Construction, Inc. had dug without a valid locate ticket and damaged existing fiber without calling it in. Jim confirmed that this is two separate violations.

Mark Meier voiced he would like to hear BX Civil & Constructions, Inc.'s side but never provided a response. Scott Wiese is concerned by the significance of the damage and willful trying to cover the damage and not let anyone know. Also concerned by no response or explanation.

Panel members agreed the damage was severe and intentional but stated this was the first offense brought forward with no previous history.

Mark Meier motioned that a violation of 49-7A-5 did exist, the violation was intentional and recommended a penalty in the amount of \$1,500 with \$0 suspended with BX Civil & Construction, Inc. meeting the requirements 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 \$1,500 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. Respondents must attend a Damage Prevention meeting in 2025.
4. Respondents must conduct an in-house safety meeting to discuss South Dakota One Call laws. Details 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 meeting is to take place within thirty (30) days of the Board Order being issued.

Jim Wedin seconded the motion. **Motion carried unanimously upon a roll call vote.**

Mark Meier also motioned that a violation of 49-7A-12 did exist, the violation was intentional and recommended a penalty in the amount of \$1,000 with \$500 suspended with BX Civil & Construction, Inc. meeting the requirements listed above. Jim Wedin seconded the motion. **Motion carried unanimously upon a roll call vote.**

OC24-029 In the matter of the complaint filed by Northwestern Energy, Huron, SD against Flatland Concrete, Huron, SD for an incident occurring November 1, 2024 at 1113 Lampe Court in Huron.

Deadline to Respond is December 13, 2024. Response was received December 17, 2024.

There is no previous history with Flatland Concrete.

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

Scott Wiese opened the discussion after reviewing the information, there were comments in both the complaint and response, it was acknowledged Flatland Concrete needed to be digging under their own locates. It is required every time to be using your own locate ticket and not someone else's.

Jim Wedin feels this was unintentional due to miscommunication with the parties involved.

Mark Meier also views this as unintentional due to Flatland Concrete moving concrete and not digging two to three feet deep. This does not disregard the danger of working with underground utilities.

Scott Wiese motioned that a violation of 49-7A-5 did exist, the violation was unintentional and recommended a penalty in the amount of \$750 with \$500 suspended with Flatland Concrete meeting the requirements 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 \$250 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. Respondents must attend a Damage Prevention meeting in 2025.
4. Respondents must conduct an in-house safety meeting to discuss South Dakota One Call laws. Details 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 meeting is to take place within thirty (30) days of the Board Order being issued.

Jim Wedin seconded the motion. **Motion carried unanimously upon a roll call vote.**

OC24-030 In the matter of the complaint filed by Montana Dakota Utilities, Bismarck, ND against Deep Foundation Group, Sioux Falls, SD for an incident occurring October 31, 2024 at 13438 363rd Avenue in Ipswich.

Deadline to Respond was December 13, 2024. Response was received on December 10, 2024.

There is no previous history with Deep Foundation Group.

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

Legal Counsel opened discussion that both parties signed Conflict Waivers. The office of May, Adam, Gerdes, & Thompson, LLP represents Montana Dakota Utilities.

Jim Wedin discussed that Deep Foundation Group continued digging with the MDU representative coming out to the area and alerting them they had lines in the area. Deep Foundation Group felt the area had already been located.

Scott Wiese pointed areas of concern of “piggybacking” off of General Contractors locate tickets. This changes if a violation was intentional or unintentional.

Discussion continued that Deep Foundation Group felt they were clear, but should not be digging under contractors' locate ticket.

Clarification was provided that MDU was not listed as a High Profile in the dig zone. Operators listed as a High Profile are able to be present on-site during excavation. MDU does have the opportunity update their information to notify contractors of High Profile facilities.

The Panel did not feel there was intent to damage any utilities, but there was negligence.

Jim Wedin motioned that a violation of 49-7A-5 did exist, the violation was unintentional and recommended a penalty in the amount of \$1,000 with \$500 suspended with Deep Foundation Group meeting the requirements 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 \$500 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. Respondents must attend a Damage Prevention meeting in 2025.
4. Respondents must conduct an in-house safety meeting to discuss South Dakota One Call laws. Details 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 meeting is to take place within thirty (30) days of the Board Order being issued.

Mark Meier seconded the motion. **Motion carried unanimously upon a roll call vote.**

Having no further business, Jim Wedin made the motion to adjourn the Panel Meeting and end the call. Mark Meier seconded the motion. **Motion carried unanimously.**

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.