

SOUTH DAKOTA ONE CALL BOARD  
OFFICE OF HEARING EXAMINERS  
PIERRE, SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT FILED BY ACCURATE LOCATING SERVICE AGAINST CABLE COMMUNICATIONS SERVICES FOR AN INCIDENT OCCURRING ON JULY 24, 2023, AT HWY 1416 IN BOX ELDER, SOUTH DAKOTA.	<b>OC23-007</b> <b>OHE24-001</b>  <b>FINDINGS OF FACT AND CONCLUSIONS OF LAW</b>
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The above matter came on for hearing before the South Dakota One Call Board (“Board”) and Office of Hearing Examiners on July 10, 2024, in-person. Cable Communications Services (“CCS”) appeared personally and by counsel, Jess Pekarski, of Costello Porter LLP, and Accurate Locating Service (“Accurate Locating”) appeared personally and by counsel, Lora Waeckerle, of Waeckerle Law, Prof. LLC.

The Board having heard all of the testimony and having considered all of the files and records herein including the arguments of counsel now hereby makes and enters the following Findings of Fact and Conclusions of Law.

Any Finding of Fact which may be deemed to be a Conclusion of Law and vice versa shall be appropriately incorporated into the Findings of Fact and Conclusions of Law as the case may be.

**FINDINGS OF FACT**

1. Accurate Locating Service, LLC (hereinafter referred to as “Accurate Locating”) is a locating service located in Rapid City, South Dakota.
2. Cable Communications Services, LLC (hereinafter referred to as “CCS”) is an underground utility company that specializes in power, natural gas, communications, sewer and water located in Black Hawk, South Dakota.
3. West River Electric (hereinafter referred to as “West River”) is a utility providing services in South Dakota.

4. CCS had planned excavation in a location in or around Highway 1416 in Box Elder, South Dakota.
5. CCS submitted a locate ticket, in compliance with SDCL 49-7A, to South Dakota 811 on July 11, 2023 for the planned excavation work in the Highway 1416 area in Box Elder, South Dakota. See Exhibit 1 and Exhibit H.
6. West River contracts with Accurate Locating to locate their utilities in the State of South Dakota.
7. Accurate Locating responded to the locate ticket and located West River's utilities on July 13, 2023 and marked it with paint.
8. Dana Fetch, on behalf of Accurate Locating as an employee, took various photos of the site on July 13, 2023, after it was marked. *See Exhibits A-F.*
9. On July 24, 2023, CCS began excavation in the location on the site for the ticket. Excavation specifically took place in the median of Highway 1416 in between Oak Street and South Ellsworth Road in or around Box Elder, South Dakota. *See Exhibits G and 13.*
10. Prior to excavation on July 24, 2023, CCS employees walked the area set for excavation and could not see any locates in the location.
11. At some point, CCS became aware that they struck a West River Utility line. CCS could not see any marks made by Accurate Locating at that time and did not realize there were unmarked utilities. Charles Sires, an employee of CCS, took photos of the site at this time and he could not see any marks that would locate the utility. *See Exhibits 2-11.*
12. CCS called in a damage ticket to indicate damage occurred on July 23, 2024. *See Exhibit 12.*
13. CCS president Chase Sanftner also visited the site on July 24, 2023 after the strike. He could not see any marks.
14. Dana Fetch also visited the site on July 24, 2023 and took a photo of power line marks on Oak Street. *See Exhibit E.*
15. After the strike, West River generated a bill to send to Accurate Locating for the damage to the utility.
16. Between June 14 and June 24, the area received .13 inches of rain. *See Exhibit 15.*
17. Accurate Locating filed a complaint against CCS on August 25, 2023 alleging CCS violated ARSD 20:25:03:05:02 by failing to maintain the locates.

18. Notice of the complaint was sent to CCS on October 12, 2023.
19. CCS filed a response to the complaint on November 1, 2023. In the response, CCS denied the allegations in the complaint.
20. On December 19, 2023, the Enforcement Panel (herein "Panel") convened pursuant to the authority present in SDCL 49-7A. The Panel did not find probable cause that a violation of ARSD 20:25:03:05:02 occurred.
21. On that same date, the Panel recommended the Complaint be dismissed.

### CONCLUSIONS OF LAW

1. The South Dakota One Call Notification Board has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-7A and ARSD 20:25 ("Applicable Laws").
2. CCS, as a contractor performing excavation, is responsible for complying with Applicable Laws.
3. One of the Applicable Laws in ARSD 20:25:03:05.02, provides:

After the underground facility operator has marked the location of that operator's underground facilities in the proposed excavation area, the excavator shall plan the excavation to avoid damage to, and minimize interference with, the marks. The excavator is responsible for protecting and preserving the staking, marking, or other designation until the marks are no longer required for proper and safe excavation work at or near the underground facilities.
4. CCS did not violate ARSD 20:25:03:05.02 as it did not fail to preserve and protect the staking, marking, or other designation of the marks.
5. The decision of the Panel to dismiss the complaint is upheld, incorporated, and adopted by reference as if fully set forth herein.

IT IS SO ORDERED.

Dated this 9<sup>th</sup> day of August, 2024.



Mark Meier  
Board Chairman