

BEFORE THE ONE CALL NOTIFICATION BOARD
THE STATE OF 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.	<p style="text-align: center;">OC23-007 OHE</p> <p style="text-align: center;">NOTICE OF HEARING</p>
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On August 25, 2023, the South Dakota One Call Notification Board received a Complaint filed by Accurate Locating Services (herein "Claimant") against Cable Communications Services (herein "Respondent") for an incident occurring on July 24, 2023, at Highway 1416 in Box Elder, South Dakota. The Complaint alleges a violation of ARSD 20:25:03:05.02 when Respondent failed to maintain markings or walk the entire route to avoid underground facilities.

A copy of the Complaint was sent to Respondent on October 13, 2023. The deadline to respond was November 4, 2023. Respondent answered the Complaint on November 1, 2023. Respondent does dispute that a violation of South Dakota One Call law occurred. Respondent alleges there were not marks and that they were unaware of any damage.

On December 19, 2023, the Enforcement Panel (herein "Panel") convened pursuant to the authority present in SDCL 49-7A. The Panel does not find probable cause that a violation of 20:25:03:05.02 occurred. Therefore, the Panel recommends the Complaint be dismissed.

On January 10, 2024, the Panel Recommendation was sent to the Claimant and Respondent. On January 15, 2024, Claimant filed a request for hearing.

The Board has jurisdiction over this matter pursuant to SDCL § 49-7A, ARSD Ch. 20:25, and SDCL § 1-26.

A hearing on this matter shall be held on March 14, 2024, from 9:30 a.m. to 10:30 a.m. CDT or until such time as the Board requires. The hearing will be conducted in person at the AmericInn, 312 Island Drive, Fort Pierre, South Dakota 57532. The Office of Hearing Examiners will preside over the meeting. All persons testifying will be subject to cross examination by the parties.

The issues to be heard at the above date and time shall be: (1) whether Respondent failed to maintain markings from a locate completed by Claimant and to be aware of underground facilities along those markings, and (2) if Respondent had such a failure, whether penalties shall be imposed by the Board pursuant to ARSD 20:25:03:05.02 and, if so, what those penalties shall be.

The hearing shall be an adversarial proceeding conducted pursuant to SDCL § 1-26. All parties have the right to be present and to be represented by an attorney. A corporation or limited liability company must be represented by an attorney at the hearing. These rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for hearing, the final decision will be based solely on the testimony and evidence provided, if any, during the hearing. If you or your representative fail to appear at the time and place set for hearing, a final decision may be issued by default pursuant to SDCL § 1-26-20. After the hearing, the Board will consider all evidence and testimony that was presented at the hearing. The Board will then enter Findings of Fact and Conclusions of Law along with a final Decision regarding this matter. As a result of the hearing, the Board shall determine whether Respondent violated any statute or rule of the Board, and, if so, whether penalties shall be imposed.

The Board's final Decision may be appealed by the parties to the South Dakota Circuit Court and the South Dakota Supreme Court as provided by law.

Dated this 5th day of February, 2024.

MAY, ADAM, GERDES & THOMPSON LLP

BY:



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CERTIFICATE OF SERVICE

Cody L. Honeywell, of May, Adam, Gerdes & Thompson LLP, hereby certifies that on the 5th day of February, 2024, he filed and served a true and correct copy of the Notice of Hearing via email and/or United States mail, first-class postage thereon prepaid, in the above-captioned action to the following at their last known address, to-wit:

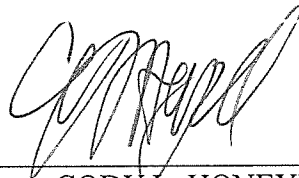
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