

BEFORE THE SOUTH DAKOTA  
ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT  
FILED BY LL & SONS INC,  
WATERTOWN, SD AGAINST  
MIDCONTINENT COMMUNICATIONS,  
SIOUX FALLS, SD FOR AN INCIDENT  
OCCURRING ON NOVEMBER 16, 2023  
AT MARINA BAY DRIVE IN  
WATERTOWN, SD.

**ORDER ADOPTING ENFORCEMENT  
PANEL RECOMMENDATION TO THE  
SOUTH DAKOTA ONE CALL BOARD**

OC24-003

On January 15, 2024, the South Dakota One Call Notification Board received a Complaint filed by LL & Sons, Inc, (herein “Claimant”) against Midcontinent Communications (herein “Respondent”) for an incident occurring on November 16, 2023, at Marina Bay Drive in Watertown, SD. The Complaint alleges a violation of SDCL 49-7A-8 when Respondent did not mark the line all the way to house. Claimant alleges they called for a respot, and Respondent stated their line turned and followed the power line. Claimant alleges they continued digging and hit Respondent’s line – 15’ off their marks.

A copy of the Complaint was sent to Respondent on March 28, 2024. The deadline to respond was April 22, 2024. Respondent answered the Complaint on April 3, 2024. Respondent does dispute that a violation of South Dakota One Call law occurred and the allegation of the unintentional nature. Respondent alleges Claimant’s photos do not show Respondent’s markings inaccurate and that they measure the vertical distance rather than horizontal distance.

On May 21, 2024, the Enforcement Panel (herein “Panel”) convened pursuant to the authority present in SDCL 49-7A. The Panel does find probable cause that an unintentional violation of SDCL 49-7A-8 occurred.

Based upon the evidence presented in the filings, the Panel recommends a penalty of \$750.00 with \$250.00 suspended upon the conditions listed below. The conditions for the suspended penalty are as follows:

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 **\$500.00** must be made to the ***South Dakota One Call Notification Board, P.O. Box 187, Rapid City, SD 57709*** within thirty (30) days of the Board Order being issued.
3. Respondent must attend a Damage Prevention meeting in 2025.
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. This meeting is to take place within thirty (30) days of the Board Order being issued.

If any of the above conditions are not met, the suspended penalty (**\$250.00**) becomes immediately due and payable to **South Dakota One Call Notification Board, P.O. Box 187, Rapid City, SD 57709.**

On June 28, 2024, the Panel's recommendation was sent to the parties to this action. The parties did not request an evidentiary hearing. The Board reviewed the Panel's recommendations

at its July 23, 2024 meeting pursuant to SDCL 49-7A-27. The Panel's recommendation was approved by the Board. It is now, therefore:

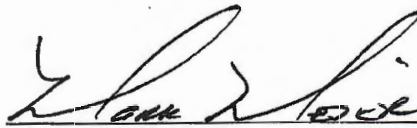
**ORDERED** that the South Dakota One Call Board adopts the recommendations of the Panel as a final resolution of this Complaint. The Panel's findings are attached hereto and shall be considered fully incorporated herein; and it is therefore:

**ORDERED** that if the penalty is not paid, the Board shall pursue any rights it has under the law regarding collections.

The South Dakota One Call Notification Board has jurisdiction over this matter pursuant to SDCL 1-26 and 49-7A and ARSD 20:25, specifically SDCL 49-7A-5, 49-7A-18, 49-7A-20, 49-7A-22, and 49-7A-26.

Dated this 8<sup>th</sup> day of August 2024.

BY ORDER OF THE SOUTH DAKOTA ONE  
CALL NOTIFICATION BOARD:



Mark Meier, Chairman