

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 6, 2023 AT
1096 S LAKE DRIVE IN WATERTOWN,
SD.

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

OC24-005

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 6, 2023, at 1096 S Lake Drive in Watertown, SD. The Complaint alleges a violation of SDCL 49-7A-8 when Respondent did not mark their utility correctly even when their line was clearly visible in Claimant’s excavated area. Claimant states that another contractor had called in for locates.

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 violations of South Dakota One Call law occurred. Respondent alleges ARSD 20:25:03:05.04 states where “multiple underground facilities exist, the operator shall separately mark each underground facility.” Respondent further alleges that they could not mark over the top of the other facilities and must mark alongside such markings.

On May 21, 2024, 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 SDCL 49-7A-8 occurred. Therefore, the Panel recommends the Complaint be dismissed pursuant to 49-7A-13 and because Claimant was not the excavating party in this matter.

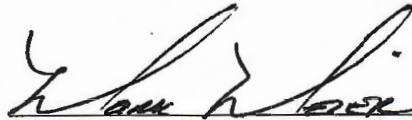
On June 28, 2024, the Panel's recommendation was sent to the parties to this action. The parties did not request an evidentiary hearing. The Board reviewed the Panel's recommendations at its July 23 2024 meeting pursuant to SDCL 49-7A-27. The Panel's recommendation was approved by the Board. It is now, 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.

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 8th day of August, 2024.

BY ORDER OF THE SOUTH DAKOTA ONE
CALL NOTIFICATION BOARD:



Mark Meier, Chairman