

BEFORE THE SOUTH DAKOTA  
ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT  
FILED BY MONTANA DAKOTA  
UTILITIES CO., RAPID CITY, SD  
AGAINST THE FENCE CONNECTION,  
RAPID CITY, SD, FOR AN INCIDENT  
OCCURRING ON JANUARY 28, 2020 AT  
114 E. MEADE ST., RAPID CITY, SD.

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

OC20-017

On February 7, 2020, the South Dakota One Call Board received a Complaint filed by Montana Dakota Utilities Co. (herein “MDU”) against The Fence Connection, (herein “Respondent”) for an incident occurring on January 28, 2020, at 114 E. Meade St., Rapid City, SD. The Complaint alleges a violation of SDCL 49-7A-5 and 49-7A-8 when Respondent was digging with an expired ticket from October 2019. MDU states that Respondent should have called in a new ticket and pot holed the gas along the proposed route of fence posts.

A copy of the Complaint was sent to Respondent on February 10, 2020. Respondent has not answered the complaint as of March 17, 2020. The deadline to respond was March 2, 2020.

On March 26, 2020, the Enforcement Panel (herein “Panel”) convened pursuant the authority present in SDCL 49-7A. The Panel finds probable cause to believe that an intentional violation of SDCL 49-7A-5 and 49-7A-8 occurred.

Based upon the evidence presented in the filings, the Panel recommends the following penalties: a penalty of \$5,000 with \$3,750 suspended for the violation of 49-7A-5 and a penalty of \$5,000 with \$3,750 suspended for the violation of 49-7A-8. Therefore, the total penalty recommended for the intentional violations of SDCL 49-7A-5 and 49-7A-8 is \$10,000 with \$7,500 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 12 months of the final Board Order,
2. The penalty payment of **\$2,500** must be made to **P.O. Box 187, Rapid City, SD 57709**, within 30 days of the final Board Order,
3. Respondent must attend a Damage Prevention meeting in 2021,

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 30 days of the final Board Order.
5. Respondent will arrange a face-to-face meeting with MDU to review the damage, dangers while working around utilities, and safe practices. This meeting is to take place within 30 days of the final Board Order being issued.

If any of the above conditions are not met, the suspended penalty (**\$7,500**) becomes immediately due and payable to **P.O. Box 187, Rapid City, SD 57709**.

On April 1, 2020, 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 May 18, 2020 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 Article 20:25, specifically SDCL 49-7A-5, 49-7A-18, 49-7A-20, 49-7A-22, and 49-7A-26.

Dated this 20<sup>th</sup> day of May 2020.

BY ORDER OF THE SOUTH DAKOTA ONE CALL  
NOTIFICATION BOARD:

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