

THOMAS J. MILLER

ATTORNEY GENERAL



IOWA DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
Environmental Law Division

1305 E. WALNUT ST.
DES MOINES, IA 50319
Main: 515-281-5164 • Direct: 515-281-5341
Email: jacob.larson@ag.iowa.gov
www.iowaattorneygeneral.gov

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Brian Iverson
Senior Vice President, General Counsel, Chief Compliance Officer
BLACK HILLS ENERGY
Rapid City Corporate Headquarters
7001 Mount Rushmore Road
Rapid City, SD 57702

RE: One Call Violations

Dear Mr. Iverson:

I am an attorney with the Iowa Attorney General's Office ("Office"), and our office is responsible for investigating complaints of alleged violations of Iowa's One Call law (Iowa Code chapter 480). The alleged violations may include conducting excavations contrary to the requirements set forth in the statute, but also the untimely or inaccurate locating and marking of underground facilities.

The State received a complaint in 2018 against Black Hills Energy ("BHE"), alleging BHE failed to timely locate and mark underground facilities. The Iowa Utilities Board ("IUB") conducted an investigation, on behalf of our Office, about whether the locating and marking of the underground facilities at issue in this complaint was conducted in compliance with Iowa law. The IUB provided a summary of the investigation to our Office (see attached file). A copy of the complete investigative file is available if requested but has not been provided due to size of the file.

After reviewing the investigatory file for the complaint, our Office has confirmed BHE violated Iowa's One Call Law. The file shows BHE admitted it failed to timely locate and mark underground facilities in this instance. BHE further admitted that due to repeated concerns about timely locating in certain geographic areas with United States Infrastructure Company ("USIC")—whom BHE had contracted with to conduct locating and marking services on its behalf to meet the requirements of Iowa's One Call law—BHE terminated its contact with USIC in those areas.

As I am sure you are well aware, violations of Iowa's One Call requirements can lead to delays in completing planned excavations, resulting in increased expenses and labor for

excavators and those who hire excavators to conduct excavations. Violations involving the inaccurate locating and marking of underground facilities are particularly concerning because they can lead to striking and damaging of underground facilities, which in turn can cause injury, or worse, to excavators, workers, first responders, and citizens, and/or lead to the loss of essential services to customers, businesses, and governmental agencies.

Failure to timely and accurately mark the “horizontal location of the operator’s underground facility” constitutes a violation of Iowa Code section 480.4(3)(a)(1). Iowa Code section 480.6(1)(a) authorizes the Attorney General to seek civil penalties up to a maximum of Ten Thousand Dollars (\$10,000) per day of each such violation involving natural gas pipelines. Iowa Code section 480.6(1)(b) authorizes the Attorney General to seek civil penalties up to a maximum of One Thousand Dollars (\$1,000) per day of each such violation to all other underground facilities. Injunctive relief is also authorized pursuant to Iowa Code section 480.7.

Our Office understands that BHE receives thousands of locate requests each year, and while our Office appreciates BHE’s substantial compliance with and long-standing support for Iowa’s One Call program, the purpose of this letter is to advise that the Iowa One Call statute must be strictly complied with. Our Office notes that BHE has recently ceased contracting with third-parties to conduct locating activities, in part because of potential compliance issues with those third-parties, and is now performing those services in-house. Our Office appreciates BHE’s recognition of those concerns and efforts to address them. However, notwithstanding BHE’s past compliance and support and efforts to move the locating responsibilities back in-house, failure to comply in the future may result in judicial enforcement proceedings initiated by our office pursuant to Iowa Code sections 480.6 and 480.7.

Thank you for your attention to this matter.

Sincerely,

Jacob Larson
JACOB J. LARSON

Assistant Attorney General
Office of Iowa Attorney General
Environmental Law Division
Phone: (515) 281-5341
E-mail: jacob.larson@ag.iowa.gov