

Underground Facilities Safe Excavation Board

*In the Matter of
AT&T, Respondent*

No. 20SA1021

September 14, 2020

DECISION

This decision was made by the Board on September 14, 2020. Respondent AT&T responded and did not contest the violation or penalty.

Board members Bianchini, Del Toro, Forte, Johns, Munoz, and Voss participated in the decision. Board members Charland and Johnson did not participate in the decision.

Having considered the report of investigation and the response by AT&T, the Board finds that (1) a probable violation of Government Code section 4216.3(a)(1)(A) occurred, and (2) an order directing AT&T to take the Board's education course is an appropriate sanction.

The Board will transmit the investigation results and the recommended penalty to the California Public Utilities Commission.

AT&T Did Not Timely Respond Late to the Locate-And-Mark Request

An operator's obligation to locate and field mark subsurface installations arises when the operator receives a locate-and-mark request from a call center.¹ AT&T's written response to the Notice of Probable Violation confirms that MGE Underground obtained a ticket and that AT&T, through its contractor, received the locate-and-mark request.

Before the legal excavation start date and time, which here was two days after MGE obtained the ticket, an operator must respond to that request by taking one

¹ Gov. Code § 4216.2(e)

of the three actions specified Government Code section 4216.3(a)(1)(A). AT&T did not respond before the legal excavation start date and time.

Referral to the California Public Utilities Commission is Appropriate

When the Board finds a probable violation of Dig Safe laws, the Board may “transmit the investigation results and any recommended penalty” to the appropriate agency, identified in Government Code section 4216.6(c) or (d).² Section 4216.6(c)(2) provides that the Public Utilities Commission shall enforce the requirements of Article 2 (commencing with section 4216) on gas corporations, electrical corporations, and water corporations.

The Public Utilities Code, at section 701, provides that the Public Utilities Commission supervises and regulates public utilities, and may do all things that are necessary and convenient in the exercise of that power and jurisdiction. Telephone corporations are “public utilities” within the meaning of section 701.³ AT&T is a telephone corporation and subject to regulation by the Public Utilities Commission.

An Order to Take the Board’s Education Course is Appropriate

Section 4216.19(e) provides that sanctions shall be graduated and may include notification and information letters, direction to attend relevant education, and financial penalties. And further, that this information is relevant to the sanction determination:

- (1) The type of violation and gravity.
- (2) The degree of culpability.
- (3) The operator’s or excavator’s history of work conducted without violation.
- (4) The operator’s or excavator’s history of work conducted without violations.

² Gov. Code § 4216.19(d)

³ Public Utilities Code § 216(a)(1)

- (5) The efforts taken by the violator to prevent violation and, once the violation occurred, the efforts taken to mitigate the safety consequences of the violation.

This is the first Notice of Probable Violation issued to AT&T. The Board finds that on order directing AT&T to take the Board's education course is appropriate.

Date:

Carl Voss, Chair