



May 6, 2022

## **NOTICE OF PROBABLE VIOLATION**

Frontier Communications  
401 Merrit 7  
Norwalk, CT 06851

Agent For Service Company Which will do Business in California as  
CSC – Lawyers Incorporating Service  
251 Little Falls Drive  
Wilmington, DE 19808

**Case No.: 22LA01484**

Address/Location of Violations: Noble Creek Park, Beaumont, CA 92223

Date/Time of Violations: January 10-27, 2022

Dear Sir or Madam:

You are receiving this Notice of Probable Violation (Notice) as a result of an investigation pursuant to Government Code sections 4216 *et seq.* The California Underground Safety Board (Board) investigator has concluded an investigation of an incident on January 10-27, 2022, in Beaumont, and found that there is a probable violation of Article 2 of Chapter 3.1 of Division 5 of Title 1 of the California Government Code. The probable violations are:

- 4216.3(a)(1)(A) Unless the excavator and operator mutually agree to a later start date and time, or otherwise agree to the sequence and timeframe in which the operator will locate and field mark, an operator shall do one of the following before the legal excavation start date and time: (i) locate and field mark within the area delineated for excavation and, where multiple subsurface installations of the same type are known to exist together, mark the number of subsurface installations, (ii) to the extent and degree of accuracy that the information is available, provide information to an excavator where the operator's active or inactive subsurface installations are located, or (iii) advise the excavator it operates no subsurface installations in the area delineated for excavation.
  
- 4216.3(c)(1)(A) On and after January 1, 2021, every operator shall supply an electronic positive response through the regional notification center before the legal excavation start date and time. Upon a showing of good cause by an operator, the board may extend the time by which the operator is required to comply with this requirement. The board shall not grant an extension beyond December 31, 2021.

On January 5, 2022, Merlin Johnson Construction was issued ticket B220050037-00B by DigAlert. Frontier did not complete locate and mark activities in the area until January 27, 2022, sixteen days after the legal excavation start date and time of January 10, 2022, in violation of Government Code Section 4216.3 (a)(1)(A). Frontier provided an incorrect electronic positive response notification on January 10, 2022, indicating that it did not have subsurface installations in the excavation area, though it would respond the next day that the area was partially marked. Frontier again provided an incorrect electronic positive response on January 20, 2022, when it indicated that the locate area was marked, when it had not been marked. These incorrect electronic positive responses are in violation of Government Code Section 4216.3 (c)(1)(A). Frontier also failed to cooperate with the investigation, in violation of Section 4151 of Title 19 of the California Code of Regulations.

### **Hearing**

The Board will hear and vote on your case at its next public meeting on July 11, 2022, at 1:00 p.m. in Sacramento.

During the meeting, the Board will review and consider the Investigation Report and exhibits, this Notice, and any other explanation or records you submit, and the Board will determine whether violations exist and whether the penalty (such as corrective action, education course, or monetary penalty) proposed by the Board investigator is appropriate. At this meeting, you may contest the violations, proposed penalty noted in the below section, and any new or adjusted penalty issued during the meeting by the Board. This will be your only opportunity to contest the violations and any penalty.

Should the Board determine that the violations occurred, the Board will make a final determination on your case with either the proposed penalty below, or a new or adjusted penalty.

The Board will notify you of its final determination following its public meeting.

### **Proposed Penalty**

Any penalties provided in this Notice, including corrective actions, are only proposals by Board investigator and do not require any corrective action or payment at this time. The Board will provide the final determination to and instructions for any penalty after the above-referenced public meeting.

Pursuant to Government Code section 4216.6, violation of Government Code, Title 1, Article 2, Chapter 3.1, Division 5 (Sections 4216 *et seq.*) may be subject to a maximum penalty of \$10,000 for negligent violation, or \$50,000 for knowing and willful violation. Knowing and willful violation of Article 2 that results in damage to a gas or hazardous liquid pipeline subsurface installation and that results in the escape of any flammable, toxic, or corrosive gas or liquid may be subject to a maximum penalty of \$100,000.

The Board investigator is recommending the below penalty:

A financial penalty, the amount to be determined by the Board, is being recommended at this time.

The proposed sanction is merited, as Frontier did not respond to the excavator until after the excavator made a “no response” notification to the one-call center, provided an incorrect electronic positive response, and failed to cooperate with the investigation. While the violations did not cause death or substantial injury, environment or property damage, and while the respondent does not

have a history of violations as determined through Board action, a financial penalty is warranted as Frontier failed to cooperate with the investigation, including by failing to provide information that may have determined whether Frontier contractors operated in compliance with Gov't Code Section 4216 *et seq.* and by failing to provide information that could have indicated whether Frontier acted expeditiously in attempting to mitigate the safety consequences of the violation.

**Response to this Notice**

Enclosed as part of this Notice is a document titled *RESPONSE TO A NOTICE OF PROBABLE VIOLATION*. Please carefully review this document and note the response options. All material you submit in response to this enforcement action are subject to public disclosure.

You have 30 business days from the date of this Notice to submit your written response to the Board. Your response to this notice must be received by the Board no later than June 20, 2022.

If you do not respond within 30 business days, this constitutes a waiver of your right to contest the Board's final determination on whether there is a probable violation and to impose a penalty in this case.

Sincerely,

*Jason Corsey*

Jason Corsey  
Chief of Investigations

Proposed hearing date: July 11, 2022