



January 11, 2010

## VIA ELECTRONIC FILING AND OVERNIGHT MAIL

South Dakota One Call Notification Board  
c/o South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

RE: Request for Reconsideration of Finding of No Probable Cause  
South Dakota Network, LLC v. Larry's Electric, Docket No. OC09-007  
South Dakota Network, LLC v. Sharpe Enterprises, Inc., Docket No. OC09-008

To Whom It May Concern:

South Dakota Network, LLC ("SDN") rejected the One Call Notification Board ("Board") Enforcement Committee's ("Committee") resolution of the complaints cited above and requested a hearing on November 24, 2009. Upon further reflection and research, SDN requests that the Board and the Committee first reconsider the decisions in both complaints before proceeding to hearings. SDN makes this request for the following reasons:

1. The Committee's decisions in the two complaints are flawed. The Notice of Complaint sent out by the Board to the two companies, dated September 17, 2009, cites in bold letters a violation of SDCL 49-7A-5 for a failure to provide notification of proposed excavation. In the body of the notice, the Board encourages the companies to specifically address an alleged violation of SDLC (sic) 49-7A-8, a failure to maintain a minimum horizontal clearance. In its decision, the Committee limited itself to a finding on the SDCL 49-7A-8 and ignored the 49-7A-5 violation although it is a violation of that statute that the SDN complaint clearly raises and which both parties spent their responses discussing. Under South Dakota law SDN is required to provide sufficient factual notice of the basis of the complaint. If SDN did not cite to a specifically applicable statute, that is not fatal to the pleading. Violations of 49-7A are clearly indicated by the facts. Indeed the Board must have taken that into consideration when it put the companies on notice of a violation of 49-7A-5. Also obvious is the fact that whoever cut the cable did not maintain adequate clearance, but the relevance of that violation is superseded by the need to be sure facilities are located and marked.

2. At the time of the cable cut, whoever cut the cable left the scene of the incident. It was only when SDN became aware of the responses to the complaints did SDN learn that Sharpe Enterprises ("Sharpe") would take responsibility for the cut. Neither Sharpe nor Larry's Electric formally served a copy of its respective response on SDN as required by the complaint notice. SDN became aware of the responses only after the Board provided SDN a copy of the Committee's decision. Sharpe responded by blaming the locator, ELM Locating and Utility

Services ("ELM"), for not properly locating and marking the cable. The language of SDCL 49-7A-25 appears to preclude the Board or the Committee from verifying the validity of that allegation and Sharpe's assertions of due diligence since its consideration of probable cause is limited to the complaint and response. SDN believes that ELM will offer a decidedly different description of the facts. However, Sharpe does admit in its response that it cut the cable and that it did so in violation of a state statute as alleged by SDN. SDN does not understand how the Committee can find no probable cause with regard to Sharpe.

If SDN has to take this matter to a hearing to complete the record, then so be it. It appears to be much more efficient and appropriate, if the statute and/or rules allow, for the Board to require its Committee to reconsider this matter before a hearing is held.

Sincerely,



William P. Heaston

Director of Business Development

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