

**BEFORE THE SOUTH DAKOTA  
ONE CALL NOTIFICATION BOARD**

<b>IN THE MATTER OF THE COMPLAINT FILED</b>	)	<b>NOTICE OF HEARING</b>
<b>BY SOUTHEASTERN ELECTRIC</b>	)	
<b>COOPERATIVE, INC., AGAINST DON RUNGE</b>	)	<b>OC11-007</b>
	)	

On August 23, 2011, pursuant to SDCL 49-7A-17 the South Dakota One Call Board (Board) received a complaint filed by Southeastern Electric Cooperative, Inc. (Southeastern) against Don Runge (Runge). The complaint alleges several violations of One Call statutes and rules including: (i) Runge failed to properly identify his excavation area. As a result the locate ticket was not sufficient and amounts to a failure to call, (ii) Damages occurred as a result of Runge's behavior including a substantial outage that involved a hospital, businesses and homes, (iii) Despite the obvious signs of damage, Runge continued to excavate in the area and refused to cease excavation even after being requested by Southeastern to do so, (iv) Excavation was not performed in a careful and prudent manner. An open alcohol container was found in the excavation equipment.

Pursuant to SDCL 49-7A-23 and 49-7A-24, a copy of the complaint was forwarded to Runge advising him that he must file an answer in writing. On October 11, 2011 a reply was filed by Runge's counsel. The reply indicates Runge hit the line due to inaccurate burial depth information provided to him by Southeastern at a preconstruction meeting. Runge denies being under the influence of alcohol and explains he agreed to pay for the temporary power outage that resulted from the incident.

Pursuant to SDCL 49-7A-22, a five member panel (Panel) convened to determine whether probable cause exists to believe a violation of any statute or rule of the Board occurred. The Panel met on October 8, 2011. The Panel found probable cause exists to believe a violation of SDCL 49-7A-5 and 49-7A-8 occurred. A copy of the Panel's recommendation was sent to the parties. On November 10, 2011 the Board received Runge's rejection of the Panel's recommendation and his request for hearing.

The Board finds that it has jurisdiction over this matter pursuant to SDCL Chapter 49-7A, including 49-7A-2, 49-7A-4, 49-7A-5, 49-7A-8, 49-7A-10, 49-7A-12, 49-7A-17 through 49-7A-27, inclusive, and SDCL Chapter 1-26.

**A hearing shall be held on January 4, 2012, at 9:00 a.m. with exhibit marking to commence at 8:30 am in Milestone Room in the Marriott Courtyard, at the Spring Hills Suites, 4304 W. Empire Pl, Sioux Falls, SD. All persons testifying will be subject to cross-examination by the parties.**

The issues at the hearing shall be: 1) whether Runge violated SDCL 49-7A-5 by commencing excavation without a proper one call ticket; and, 2) whether Runge failed to maintain the proper

clearance between underground facilities and the cutting edge of mechanical equipment in violation of SDCL 49-7A-8. Also at issue shall be whether penalties shall be imposed by the Board pursuant to SDCL 49-7A-18 and/or 49-7A-19, and, if so, what those penalties shall be.

The hearing shall be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Board will consider all evidence and testimony that was presented at the hearing. The Board will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. As a result of the hearing, the Board shall determine whether Runge violated any statute or rule of the Board, and, if so, whether any penalties shall be imposed.

The Board's Final Decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please call 1-800-781-7474 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 8<sup>th</sup> day of December, 2011

Kara Semmler

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#### CERTIFICATE OF SERVICE

I hereby certify that copies of Notice of Hearing were electronically served on the following, at the addresses shown below on this the 8<sup>th</sup> day of December, 2011.

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