BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT BY SOUTHEASTERN ELECTRIC COOPERATIVE, INC. AGAINST DON RUNGE	))))	ENFORCEMENT PANEL RECOMMENDATION TO THE SD ONE CALL BOARD OC11-007

On August 23, 2011, the South Dakota Public Utilities Commission received a complaint from Southeastern Electric Cooperative, Inc. (herein "Southeastern") against Don Runge (herein "Runge").

The complaint alleges several violations of One Call statutes and rules including:

- Runge failed to properly identify his excavation area. As a result the locate ticket was not sufficient and amounts to a failure to call.
- Damages occurred as a result of Runge's behavior including a substantial outage that involved a hospital, businesses and homes.
- Despite the obvious signs of damage, Runge continued to excavate in the area and refused to cease excavation even after being requested by Southeastern.
- Excavation was not performed in a careful and prudent manner. An open alcohol container was round in the excavation equipment.

Runge first requested a reply extension on September 9, 2011. The extension was granted until September 30, 2011. A second extension was requested on September 29, 2011. It too was granted until October 19, 2011.

On October 11, 2011 a reply was filed by Runge's counsel. The reply indicates Mr. Runge hit the cable due to inaccurate burial depth information provided to him by Southeastern Electric 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. The reply does not dispute the allegations regarding failure to properly request utility locates.

On October 28, 2011, pursuant to SDCL 49-7A-22 a panel of five One Call Board members (herein "Panel") convened. The Panel met to determine whether probable cause exists to believe the violation occurred as described in the complaint. The panel found two violations.

The Panel found probable cause exists to believe a violation of SDCL 49-7A-5 occurred. Specifically, after discussing the One Call tickets and reviewing a map of the excavation site the panel found excavation occurred without a proper One Call ticket.

The Panel found probable cause to believe a violation of SDCL 49-7A-8 occurred. Specifically, due to the damage that occurred, they found Runge failed to maintain a

minimum horizontal clearance of eighteen inches between a marked underground facility and the cutting edge of mechanical equipment.

The Panel did not find either violation occurred intentionally. As such the Panel looked to SDCL 49-7A-18 and the factors in SDCL 49-7A-26 to determine proper penalties.

The Panel found it proper to access a One Thousand Dollar ($1,000) penalty for each violation with Five Hundred Dollars ($500) suspended for each if a Five Hundred Dollar ($500) payment is received for each violation within thirty days of One Call Board approval of this recommendation and issuance of the final Order. The Panel penalty recommendation is based on: the excavation proximity and potential effect on a hospital and failure to address plans to comply with applicable statute and rules in the future. **A total of One Thousand Dollars ($1,000) is due within thirty days of issuance of the final SD One Call Board Order if this recommendation is accepted.**

Additionally, the entire suspended portion ($1,000) of the penalty becomes immediately due and payable should Runge be found guilty of a violation of SDCL 49-7A or ARSD 20:25 within the twelve months following the date of the final South Dakota One Call Board Order.

The Panel recommends the South Dakota One Call Board accept its findings and recommendations herein. If either party to this Complaint disagrees or objects to the recommendations or findings herein, a hearing may be requested. To request a hearing you must reply within twenty days from the date of service of this notice. Failure to request a hearing is considered acceptance of the recommendations and findings herein.

The South Dakota One-Call Notification Board has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-7A and ARSD 20:25.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile by first class mail, or by other electronic means.

Larry L. Janes, Executive Director

Date 11-1-2011

REQUEST FOR A HEARING
COMPLAINT OC11-007

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC11-007 AND REQUEST A HEARING.

_____ _____

Signature – Don Runge **Date**

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC11-007 AND REQUEST A HEARING.

_____ _____

Signature – Tim Chance **Date**

<u>YOUR REQUEST FOR A HEARING MUST BE SENT TO ALL OTHER PARTIES INCLUDING:</u>

SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
C/O SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
500 E. CAPITOL AVE.
PIERRE, SD 57501-5070

Failure to request a hearing, results in acceptance of the Enforcement Committee's recommendation. In that case, the One Call Board will Order the recommendation as the final disposition of this Complaint.