BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT FILED BY THE CITY OF AURORA EAGLE WEST	))))	ENFORCEMENT PANEL RECOMMENDATION TO THE SD ONE CALL BOARD OC11-013

On November 14, 2011 the South Dakota Public Utilities Commission received a complaint from the City of Aurora (herein "Aurora") against Eagle West. The complaint alleges Eagle West failed to wait the statutory 48 hours after requesting a utility locate in violation of SDCL 49-7A-5.

A copy of the complaint was sent to Eagle West on November 14, 2011. Eagle West did not Answer the Complaint. Eagle West was further notified of the Enforcement Panel meeting in a correspondence dated December 6, 2011.

On December 16, 2011, pursuant to SDCL 49-7A-22 a panel of four 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 probable cause exists to believe a violation of SDCL 49-7A-5 occurred based on Eagle West's failure to reply to any of Aurora's allegations. Specifically, the Panel found Eagle West admitted that it failed to wait the requisite 48 hours prior to commencement of excavation due to its failure to reply to the Complaint. The Panel did not have enough evidence, however, to find the violation intentional.

The Panel found it proper to access a Five Hundred Dollar ($500) penalty. Although the Complaint did not offer complete information to fully understand the extent of the violation, failure to honor the start time of a ticket can cause extreme damage and injury. The Panel found it proper, however, to conditionally suspend Two Hundred Fifty Dollars ($250) of the penalty. If Eagle West either (i) fails to make payment of the **Two Hundred Fifty Dollar ($250) unsuspended portion of the penalty within thirty days of issuance of the final SD One Call Board Order** or (ii) if Eagle West is found guilty of a One Call violation in the next 12 months, the entire Five Hundred ($500) will be immediately due and owing.

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 12-16-2011

REQUEST FOR A HEARING
COMPLAINT OC11-013

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC11-013 AND REQUEST A HEARING.

_____ _____

Signature – City of Aurora **Date**

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC11-013 AND REQUEST A HEARING.

_____ _____

Signature – Eagle West **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.