BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT FILED BY WATERTOWN MUNICIPAL UTILITIES AGAINST STROMSETH CONSTRUCTION FOR AN INCIDENT OCCURING ON JULY 28, 2012 IN WATERTOWN, SOUTH DAKOTA	) ENFORCEMENT PANEL) RECOMMENDATION TO) THE SD ONE CALL BOARD))))	OC12-012

On July 31, 2012 the South Dakota Public Utilities Commission received a complaint from Watertown Municipal Utilities (herein "Watertown") against Stromseth Construction (herein "Stromseth") of Watertown, SD. The complaint alleges Stromseth performed excavation without proper locates and failed to properly expose the facility..

A copy of the complaint was sent to Stromseth on August 3, 2012. Stromseth did not respond.

On August 29, 2012, 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 violations occurred as described in the complaint.

I. VIOLATIONS OF SDCL 49-7A-5

The Panel found sufficient evidence was presented to determine probable cause exists to believe two separate violations of SDCL 49-7A-5 occurred. Specifically, the Panel found Stromseth performed excavation without a valid ticket on Saturday, July 28 and Sunday July 29, 2012. Based on the existence of previous Complaints against Stomseth, and its lack of response to the Complaint, the Panel found the violation to be intentional.

JULY 28 VIOLATION: The Panel found it proper to assess a Five Thousand Dollar ($5,000) penalty due to the existence of previous complaints, the degree of danger when excavating around natural gas facilities and the failure of Stromseth to take steps to prevent future violations. (SDCL 49-7A-19) The Panel found it proper, however, to conditionally suspend Two Thousand, Five Hundred Dollars ($2500) of the penalty.

The suspension conditions are as follows:

(i) Stromseth shall make payment of the **Two Thousand, Five Hundred Dollar ($2,500) unsuspended portion** of the penalty within thirty days of issuance of the final SD One Call Board Order.

(ii) Stromseth must not be found guilty of a One Call violation in the next 12 months.

(iii) Stromseth shall attend a spring 2013 excavator meeting put on by the South Dakota One Call Executive Director.

(iv) Stromseth shall conduct and document an in-house gas safety meeting for its employees. The meeting shall be held within 30 days of the final One Call Order. Documentation shall include the printed and signed names of the meeting participants, details of the material discussed along with the date and length of the meeting. Documentation shall be submitted to the Executive Director of South Dakota One Call.

If any of the conditions are not met, the entire Five Thousand Dollar Penalty ($5,000) will be immediately due and owing.

JULY 29 VIOLATION: The Panel found it proper to assess a **Five Thousand Dollar ($5,000) penalty** due to the existence of previous complaints, the degree of danger when excavating around natural gas facilities and the failure of Stromseth to take steps to prevent future violations. (SDCL 49-7A-19)

II. VIOLATION OF ARSD 20:25:03:05.03

The Panel found sufficient evidence was presented to determine probable cause exists to believe a violation of ARSD 20:25:03:05.03 occurred. Specifically, the Panel found Stromseth failed to properly expose facilities in compliance with the administrative rule. Based on the existence of previous Complaints against Stomseth, and its lack of response to the Complaint, the Panel found the violation to be intentional.

The Panel found it proper to assess a **Five Thousand Dollar ($5,000) penalty** due to the existence of previous complaints, the degree of danger when excavating around natural gas facilities and the failure of Stromseth to take steps to prevent future violations. (SDCL 49-7A-19)

The Panel recommends the South Dakota One Call Board accept its findings and recommendations herein. If accepted by the Board, a Twelve Thousand Five Hundred Dollar penalty ($12,500) will be due within thirty days from the Board Order. If the conditions above are not met, an additional Two Thousand, Five Hundred ($2,500) will be added to the total penalty. 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 9-7-2012