

IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,	*	CIV. 12-573
Plaintiff,	*	
vs.	*	
	*	APPLICATION FOR DEFAULT
DON RUNGE,	*	JUDGMENT
Defendant.	*	

COMES NOW, Plaintiff, the State of South Dakota, through and by the Public Utilities Commission ("Plaintiff" or "Commission"), an agency of the State of South Dakota, and hereby makes application to the Court for entry of Judgment by Default in the above-captioned matter pursuant to SDCL 15-6-55(b).

1. The Commission commenced this action on July 23, 2012. The Minnehaha County Sheriff personally served the Summons and Complaint on Defendant on August 21, 2012. The Sheriff's Return of Service is attached as Exhibit A.

2. Defendant has filed neither an Answer nor any pleading in this case.

3. This action was originally brought pursuant to SDCL 49-7A-28 to recover the civil penalty assessed against Defendant by the South Dakota One-Call Notification Board ("One-Call").

4. One-Call is a board established by SDCL 49-7A-2.

5. One-Call, pursuant to SDCL 49-7A-17, has the authority to receive complaints against persons who violate provisions of SDCL chapter 49-7A and rules promulgated by One-Call and, pursuant to SDCL 49-7A-18 and 49-7A-19, assess civil penalties against persons found to have violated these laws.

6. On August 23, 2011, pursuant to SDCL 49-7A-17, One-Call received two complaints filed by South Eastern Electric Cooperative, Inc. against Defendant.

7. Defendant filed an answer to the complaint in docket OC11-007 ("First Complaint") on October 11, 2011, and to the complaint in docket OC11-008 ("Second Complaint") on October 11, 2011.

8. A five member panel (the "Panel") was, therefore, appointed by the Chairman of One-Call pursuant to SDCL 49-7A-22 to determine whether probable cause existed to believe violations of SDCL 49-7A-5 and 49-7A-8 occurred as alleged in the Complaint. The panel found probable cause to believe that the violations occurred.

9. A copy of the One-Call Panel's recommendations was sent to the parties. Defendant disputed the Panel's findings and requested a hearing. Defendant later agreed to pay the civil penalty and requested the hearing be cancelled.

10. Defendant's cancelation of the hearing constitutes acceptance of the Panel's recommendation per SDCL 49-7A-27.

11. The Panel's recommendation for the First Complaint included a suspended fine based on Defendant's compliance with certain conditions, including payment of the portion which was not suspended. Failure to satisfy the aforementioned condition resulted in civil penalties against Defendant in the First Complaint of Two Thousand Dollars (\$2,000). A civil penalty of \$2,500 was assessed for the Second Complaint. A complete copy of the recommendations is incorporated into the One Call Order attached as Exhibit B.

12. The Order, incorporating the conditions, was served on Defendant. See Sheriff's return of service attached hereto as Exhibit C. Defendant neither appealed the One-Call decision nor met the conditions in the Order, and accordingly, owes \$4,500 in civil penalties.

13. One-Call made a written demand to Defendant for payment of the civil penalties as required by SDCL 49-7A-33. The demand letter was sent to Defendant on March 2, 2012.

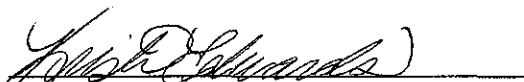
14. At the request of One-Call, the Commission brought an action in the court against Defendant to recover such penalty in accordance with SDCL 49-7A-28.

15. Defendant has neither paid anything to the Commission nor One-Call in satisfaction of the \$4,500 civil fine levied by One-Call. Further, Defendant has not given any indication to the Commission or One-Call that he intends to pay the fines.

WHEREFORE, Plaintiff requests that the Court enter judgment by default against Defendant as follows:

1. For a monetary judgment in the amount of \$4,500 against Defendant.

Dated this 7th day of February, 2013.



Kristen N. Edwards
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South Dakota Public Utilities Commission
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