
THE STATE OF SOUTH DAKOTA, * CIV _____
*
Plaintiff, *
*
vs. *
*
DON RUNGE, *
*
*
Defendant. *

COMPLAINT

Plaintiff State of South Dakota, by and through its undersigned Counsel, for its
Complaint states as follows.

1. Plaintiff, the State of South Dakota ("Plaintiff") brings this action by and through the South Dakota Public Utilities Commission ("The Commission"), an agency of the state of South Dakota created by SDCL 49-1-8.
2. Defendant Don Runge ("Defendant") is an individual and sole proprietor doing business in South Dakota. Defendant's mailing address is: 5204 W 12th Street Sioux Falls, SD 57107.
3. This action is brought pursuant to SDCL 49-7A-28 to recover the civil penalty assessed against Defendant by the South Dakota One-Call Board ("One-Call").
4. One-Call is a board established by SDCL 49-7A-2. One-Call was established to provide a service through which a person can notify the operators of underground facilities of plans to excavate, and to request the marking of the facilities. One-Call has promulgated rules and procedures pursuant to SDCL 49-7A-4 to regulate the notification process of the above located at ARSD Article 20:25.

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, may assess civil penalties against persons found to have violated these laws.

6. On August 23, 2011, pursuant to SDCL 49-7A-2, One-Call received two complaints against Defendant. Both complaints were filed by SouthEastern Electric Cooperative, Inc. Both complaints are attached hereto as Exhibit A.

7. Pursuant to SDCL 49-7A-22 a five member panel was appointed by the Chairman of One-Call to hear both complaints (the "Panel"). The Panel found probable cause existed, in both, to believe violations of South Dakota One Call law occurred.

COMPLAINT 1

8. The Panel found probable cause existed to believe a violation of SDCL 49-7A-5 and 49-7A-8 occurred near the intersection of 69th and Tallgrass Ave in Lincoln County, Sioux Falls, SD on May 31, 2011. Specifically, the Defendant engaged in excavation activity without a One Call Ticket and failed to maintain the required distance between mechanical equipment and utility facilities.

9. The Panel recommended a civil penalty be assessed against Defendant in the amount of Two Thousand Dollars (\$2,000).

10. A copy of the Panel's recommendations was served on Defendant via first class mail. The Panel decision is attached hereto as Exhibit B.

11. The Defendant disputed the Panel's findings and requested a hearing. The Defendant later agreed to pay the civil penalty and requested the hearing be cancelled.

12. Based on the Defendant's request the hearing be cancelled and acceptance of the Panel recommendation, One-Call issued an Order on January 25, 2012. The One-Call Order was served on Defendant via first class mail on January 26, 2012. The One-Call Order is attached hereto as Exhibit C. Time for Defendant to appeal the decision of One-Call expired according to SDCL 1-26-31.

13. Defendant failed to pay the civil penalties as specified in the Order, and Defendant now owes Two Thousand Dollars (\$2,000) in civil penalties.

COMPLAINT 2

14. The Panel found probable cause existed to believe a violation of SDCL 49-7A-5 occurred at the intersection at of 69th and Tallgrass Ave, in Lincoln County, Sioux Falls, SD on June 13, 2011. Specifically, once again, Defendant engaged in excavation activity without a One Call ticket.

15. The Panel recommended a civil penalty be assessed against Defendant in the amount of Two Thousand Five Hundred Dollars (\$2,500).

16. A copy of the Panel's recommendation was served on Defendant via first class mail. The complete Panel decision is attached hereto as Exhibit D.

17. The Defendant disputed the Panel's findings and requested a hearing. The Defendant later agreed to pay the civil penalty and requested the hearing be cancelled.

18. Based on the Defendant's request the hearing be cancelled and acceptance of the Panel recommendation, One-Call issued an Order on January 25, 2012. The One-Call Order was served on Defendant via first class mail on January 26, 2012. The One-Call Order is attached hereto as Exhibit E. Time for Defendant to appeal the decision of One-Call expired according to SDCL 1-26-31.

19. Defendant failed to pay the civil penalty as he agreed, and now owes Two Thousand Five Hundred Dollars (\$2,500) in civil penalties.

20. One-Call made a written demand to Defendant for payment of the civil penalties pursuant to SDCL 49-7A-33 for both complaints above. The demand was served on Defendant via first class mail. A copy of the demand is attached hereto as Exhibit F. More than thirty (30) days have elapsed since the demand was sent and Defendant failed to pay the prescribed civil penalties.

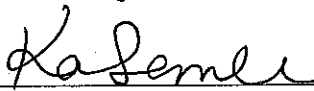
21. One-Call requested the Commission bring an action in this Court against Defendant to recover such penalty in accordance with SDCL 49-7A-28.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

1. For a monetary judgment in the amount of Four Thousand Five Hundred Dollars (\$4,500) plus Plaintiff's costs, disbursements and statutory interest to the extent allowed by law.

2. For such other and further relief as the Court may deem just and proper.

Dated this 23 day of July, 2012.



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