STATE OF SOUTH DAKOTA	)
	:SS
COUNTY OF CODINGTON	)

IN CIRCUIT COURT
THIRD JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,
Plaintiff.

CIV. 13-88

vs.

\*

STROMSETH CONSTRUCTION, INC., Defendant.

APPLICATION FOR DEFAULT JUDGMENT

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 February 13, 2013.

  The Codington County Sheriff personally served the Summons and Complaint on Defendant on February 19, 2013. 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 July 31, 2012, pursuant to SDCL 49-7A-17, One-Call received complaint filed by Watertown Municipal Utilities against Defendant.
- 7. 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 ARSD 20:25:03:05.03 occurred as alleged in the Complaint. The panel found probable cause to believe that the violations occurred.
- 8. A copy of the One-Call Panel's recommendations was sent to the parties. Defendant failed to respond to the recommendations or request a hearing.
- 9. Defendant's failure to request a hearing constitutes acceptance of the Panel's recommendation per SDCL 49-7A-27.
- 10. The Panel's recommendation included a suspended fine based on Defendant's compliance with certain conditions, including payment of the portion which was not suspended. The portion of the fines that was not suspended totaled \$12,500. The suspended portion was \$2,500. Defendant paid only \$2,500 of the fine. Failure to satisfy the aforementioned condition resulted in civil penalties against Defendant in the First Complaint of \$12,500.

A complete copy of the recommendations of the Panel in OC12-012 is attached as Exhibit B.

- 11. One-Call adopted the recommendations of the Panel on October 3, 2012. The Order, incorporating the conditions, was sent to Defendant on October 4, 2012. Defendant neither appealed the One-Call decision nor met the conditions in the Order, and accordingly, owes \$12,500 in civil penalties.
- 12. 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 November 9, 2012.
- 13. 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.
- 14. Defendant has neither paid the entirety of the fine to the Commission nor One-Call in satisfaction of the \$12,500 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 \$12,500 against Defendant.

Kristen N. Edwards

Special Assistant Attorney General South Dakota Public Utilities Commission 500 East Capitol Avenue Pierre, SD 57501