

November 2, 2021

Amanda Maxwell, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
621 Woodland Square Loop SE  
Lacey, WA 98503

RE: *Washington Utilities and Transportation Commission v. DRG Construction, Inc.*  
Commission Staff's Response to Contest of Violations  
Docket DG-210208

Dear Ms. Maxwell:

On May 19, 2021, the Washington Utilities and Transportation Commission (Commission) issued a \$5,000 penalty against DRG Construction, Inc. (DRG or Company) for a violation of RCW 19.122.055, which occurred on September 15, 2020.

This violation was for damage to an underground natural gas facility, which occurred on September 15, 2020, at 1417 Brown's Point, Washington. The Company failed to provide the required notice to facility operators through the one-call utility locator service as required before excavating and subsequently causing damage to an underground natural gas facility.

On October 21, 2021, the Company responded to the Commission's penalty assessment and contested the violation, stating that the Company was "not digging, they were back blading for topsoil and the gas line was less than two inches deep and on the wrong side of the property line".

On October 27, 2021, staff contacted the Company explaining this violation is specifically referencing not having a valid locate ticket when the damage occurred. Staff requested any additional information they might want to be considered and included the links to RCW 19.122. The Company stated they believe they did not violate the law.

Staff believes the original penalty should be upheld based on consideration of the following factors:

1. **Whether the company demonstrates that the facts considered by the Commission underlying the assessment were incorrect or do not support the penalty assessed.** DRG did not demonstrate that the Commission's assessment was incorrect. The information provided in DRG's contest is an assertion that they were not "digging", but rather back blading soil. The RCW 19.122.020(5) definition for *Excavation*; *any operation including the installation of signs, in which earth, rock, or other material on or below the ground moved or otherwise displaced by any means*. According to DRG and the Gas First Responder (GFR) report, the Company was using heavy equipment to perform grading. The photos submitted by PSE demonstrate there was a significant amount of earth being moved around on the property. DRG did not provide any additional information that would relieve them of their duty to obtain underground utility locates for that location before beginning excavation.
2. **Whether the company demonstrates that information or factors exist that the Commission may not have considered.** DRG asserted that the gas line that was struck was only 2" deep and it was on the wrong side of the property line. The GFR report states the line was 10" deep where it

was damaged. Had DRG requested locates as required by RCW 19.122 the gas line would not have been damaged regardless of its depth. The depth of the line is not material in this case.

3. **Whether the company explains other circumstances that convince the Commission that this violation did not occur or that a lesser penalty will be equally effective in ensuring compliance.** DRG did not explain any other circumstances to support that the violation did not occur. The Company did not provide any additional information to support that they had a valid locate ticket or that they were not the excavator that caused the damage. DRG did not provide any further follow-up information for Staff. Given that the Commission previously issued DRG a Penalty Assessment of \$2,000 for a violation and two warning letters, Staff determined that the recommended penalty was fair and necessary given the circumstances of the violation.

If you have any questions, please contact Joice Hagen at (360) 664-1321, or by email at [Joice.Hagen@utc.wa.gov](mailto:Joice.Hagen@utc.wa.gov).

Sincerely,

Sean C. Mayo, Director  
Pipeline Safety