



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

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March 9, 2017

Steven V. King, Executive Director and Secretary
Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, WA 98504-7250

RE: *Washington Utilities and Transportation Commission v. Barrett's Enterprise, Inc.*
Commission Staff's Response to Request for Exception.
Docket D-161118

Dear Mr. King:

On Nov. 10, 2016, the Utilities and Transportation Commission (commission) issued an \$11,000 Penalty Assessment in Docket D-161118, against Barrett's Enterprise, Inc. (Barrett's Enterprise) for three violations of RCW 19.122. These violations were based on a referral from the Washington State Dig Law Safety Committee (Safety Committee), as a result of complaints filed by Puget Sound Energy (PSE).

After conducting a review hearing on Sept. 21, 2016, the Safety Committee originally recommended that \$10,000 of the total \$11,000 penalty amount should be deferred and ultimately waived on the conditions that; (1) Barrett's Enterprise owners and all crews complete National Utility Contractor Association (NUCA) Dig Safe Training within 90-days of the commission order and; (2) Barrett's Enterprise had no further violations of RCW 19.122.030 within 12-months of the commission order. If Barrett's Enterprise failed to comply with either of these conditions then the \$10,000 deferred penalty would become immediately due and payable.

Staff agreed with the Safety Committee's decision on the violations, but disagreed with the penalty amount. Based on the number of violations and the length of time over which they occurred, and Barrett's Enterprise positive history of calling for utility locates prior to performing work, staff believed a more significant penalty was justified to encourage future compliance. Staff recommended that \$4,000 of the penalty be immediately enforced and the remaining \$7,000 be deferred for one year on the same conditions the Safety Committee recommended, both company attended training and no further violations of RCW 19.122.030.

The penalty assessment was officially served on Barrett's Enterprise on Nov. 16, 2016, and was signed for by company representative Kaylee Barrett. On page three of the penalty assessment, it states that Barrett's Enterprise must respond within 15 days of receiving the notice and indicate which selection they are making in regards to the penalty amount. Barrett's Enterprise failed to respond to the commission before the 15-day deadline of Dec. 2, 2016.

In response to a letter from Financial Services indicating the full \$11,000 was due and payable, the commission received a letter from Barrett's Enterprise on Feb. 22, 2017, requesting an exception to pay the reduced penalty after the allowable date. Barrett's Enterprise requested the ability to pay the \$4,000 portion of the penalty, with the remaining \$7,000 suspended as outlined in the original conditions. Barrett's Enterprise stated they failed to respond because the penalty assessment was sent to the company's P.O. Box and not passed on to their main office. They also indicated that the only information passed on was the option of attending the Dig Safe class which would reduce the penalty amount to \$4,000. The company stated they have already sent three employees to the Dig Safe class.

Staff reviewed the original case file and the information provided by Barrett's Enterprise in their request for an exception to pay the reduced penalty after the allowable date. Staff researched Barrett's Enterprise history of requesting utility locates and found that during the approximately one month period of time from their first violation on April 5, 2016, until their third violation on May 18, 2016, Barrett's Enterprise requested 34 other utility locates. Of these locate requests, 18 of them were for job sites located in the Lacey, WA area where the violations occurred. This indicates to staff that the violations were the result of negligence on the company's part, as opposed to lack of knowledge of the requirements of Washington State's dig law.

Staff has become aware of two additional complaints filed with the Safety Committee against Barrett's Enterprise, which allege the exact same violations the company was cited for in the initial penalty assessment. These alleged violations occurred after the Safety Committee review hearing was held on Sept, 21, 2016, and also after the penalty assessment was served on Nov. 16, 2016. While no action has currently been taken by the Safety Committee on these two alleged violations, this information is troubling for staff. The alleged violations in December 2016 and January 2017 demonstrates Barrett's Enterprise continued failure to maintain compliance with Washington State's dig law.

Staff recommends that the commission deny Barrett's Enterprise request for an exception to pay the reduced penalty amount and order that the full \$11,000 amount become immediately due and payable. This recommendation is based on the fact the company failed to provide a sufficient reason for missing the due date of Dec. 2, 2016, and staff's knowledge of the two new complaints filed against the company alleging the same violations as previously cited.

Sincerely,

Alan E. Rathbun
Pipeline Safety Director