



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

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February 14, 2019

Mark L. Johnson, Executive Director and Secretary  
Washington 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. Aero Construction*  
Commission Staff's Response to Contest of Violations and Request for Hearing  
Docket DG-180992

Dear Mr. Johnson:

On January 24, 2019, the Commission issued a \$20,000 penalty against Aero Construction (Aero or Company) for three violations of RCW 19.122.030. These violations were for damages to underground natural gas facilities caused because Aero Construction failed to provide notice to the one-call utility locator service as required by statute prior to excavating.

On February 5, 2019, Jeffrey C. Wishko, Aero's legal counsel, responded to the Commission's Notice of Penalties by requesting a hearing to contest the second and third violations for which it was penalized \$5,000 and \$10,000, respectively. In its response, the Company stated that with regard to the second violation, which occurred on July 26, 2017, the marks made by the utility locator service were inaccurate, and stated that the damage would not have occurred had the marks been accurate. Additionally, the Company stated that it had a valid dig ticket for the location of the third violation, which occurred on August 30, 2018<sup>1</sup>.

Aero's contention of the second violation, which occurred on July 26, 2017, is without merit, as at the time of the damage incident Aero did not have a valid dig ticket. Aero submitted a request to locate underground facilities on June 1, 2017. This request expired 45 days later on July 16, 2017, 10 days before the damage incident. Aero requested an update of this ticket on July 27, 2017, one day after the damage occurred. Aero suggested that if the marks had been accurate, it would not have damaged the gas facility. RCW 19.122 does not contain an exemption from penalty for excavators that damage an underground utility without a valid dig ticket that was mismarked by the locator, making Aero's reason for contending this violation irrelevant. At the time of the damage incident, Aero did not have a valid dig ticket, and therefore violated RCW 19.122.

<sup>1</sup> In its response to the Commission, Aero Construction incorrectly referred to this violation as occurring on August 10, 2018. The damage incident occurred on August 30, 2018.

Aero also contends that it had a valid dig ticket at the time of the third violation on August 30, 2018. During the investigation, Staff reviewed documents from Puget Sound Energy (PSE) and its contracted locator ELM, which stated that Aero had a valid dig ticket (#18328445) for part of the job site, but the damage occurred outside of where utilities had been located per the dig ticket request. During the investigation, Aero stated in an email that ticket #18328445 “is associated with a different site. Unfortunately, Aero did not request a locate for Bldg. 12 – footing excavation. We have been diligent in calling for locates on this project. This was an oversight.” Aero did not provide an alternate ticket number to Staff at the time of investigation to demonstrate that it had a valid ticket for the area where the damage incident occurred, nor did it imply that it did have a valid ticket.

Upon receiving Aero’s response claiming it did have a valid ticket, Staff performed additional searches for dig tickets requested by Aero, and did not find a valid ticket. Ticket #18319458 was examined, which was valid at the time of the damage incident. This ticket requested that NE 15<sup>th</sup> St be marked right-of-way to right-of-way for utility tie-in work, and included the section of NE 15<sup>th</sup> St north of the damage site. This ticket did not include the area where the damage incident happened, which was on private property 45 feet south of the centerline of NE 15<sup>th</sup> Ave and 91 feet east of the centerline of 158<sup>th</sup> PI NE. PSE and ELM documents as well as Aero’s response to Staff’s request for information during the investigation indicated that the Company was digging for a building foundation, which confirms it was not in a right-of-way, and therefore out of the scope of the ticket request. Although valid, ticket #18319458 did not include the area in which the damage incident occurred, as evidenced by documents from ELM, PSE, and Aero’s response to Staff’s request for information during the investigation. Aero did not provide an alternate ticket number in its response to the penalty assessed by the Commission that supports its claim that it had a valid ticket for the area where the damage incident occurred, and all other evidence indicates that the Company was digging outside of the scope of any valid ticket it did possess at the time of the damage incident. PSE and ELM documents stated that the gas line was locatable and unmarked at the time of damage, further supporting Staff’s conclusions that a utility locate request was not made that included the area where the damage occurred.

Staff recommends that the Commission deny Aero’s request for a hearing for both violations it is contesting, because no new evidence has been presented or discovered to indicate that it had a valid dig ticket for either violation, and further recommends the Commission impose the \$15,000 penalty assessed for the contested violations.

Sincerely,

A handwritten signature in blue ink, appearing to read "SM", is written over the word "Sincerely,".

Sean C. Mayo, Director  
Pipeline Safety