



STATE OF WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION  
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July 29, 2019

Mark L. Johnson, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
621 Woodland Square Loop SE  
Lacey, WA 98503

RE: *Washington Utilities and Transportation Commission v. Behnke Construction*  
Commission Staff's Response to Contest of Violations  
Docket DG-190369

Dear Mr. Johnson:

On June 18, 2019, the Commission issued a \$1,000 penalty against Behnke Construction (Behnke or Company) for one violation of RCW 19.122.030. This violation was for damage to an underground natural gas facility on December 5, 2018, caused because Behnke failed to provide notice to the one-call utility locator service as required by the statute prior to excavating and causing damage to an underground natural gas facility. On July 12, 2019, Behnke submitted a handwritten response to the penalty. The letter did not indicate if Behnke was requesting a hearing.

Staff's investigation of the damage incident included a review of a Damage Incident Reporting Tool (DIRT) report submitted by Puget Sound Energy (PSE), a report from PSE's Gas First Response team, and a report from PSE's contract locator, all of which identified Behnke Construction as the party responsible for the damage on December 5, 2018. The GFR and DIRT reports contain contact information for Behnke that is consistent with Behnke Construction's contact information on the Washington Department of Revenue and Labor & Industries websites, and is also consistent with an Alleged Violation of Washington Dig Law letter the Commission mailed to Behnke on October 9, 2015.

The GFR and ELM reports indicate that there were utility locate marks on the ground at the time of the damage, however these locate marks were not requested by Behnke as required by RCW 19.122, as noted in the reports. Additionally, staff was unable to find a utility locate request from Behnke for this location that was valid on the date of the damage incident. Staff was unable to contact Behnke during the investigation, because multiple attempts resulted in the inability to leave a voicemail message due to a recording informing staff that the voicemail box was full.

In its letter to the Commission, Behnke contends that it was another company with a similar name responsible for the violation, despite the information received from PSE and ELM. Behnke then states that the Company would not have hit the gas line had it been installed correctly, and alleges that the gas line was installed illegally. Behnke was unable to provide a valid dig ticket number to PSE's GFR or ELM, and did not provide a valid dig ticket number in his response to the Commission.

While it is possible that the underground gas facility that Behnke encountered was at a depth less than what is required at installation, it is difficult to determine at what depth the facility was installed due to many factors that could affect its depth after installation, including post-installation grading or construction done above the buried line, or environmental factors such as the freezing and thawing of the ground. RCW 19.122.055, which authorizes a civil penalty for failing to notify the one-number locator service if damages occur, requires only that an underground natural gas facility is damaged without providing the proper notice to the one-call service to be considered a violation.

Staff recommends the Commission impose the \$1,000 penalty assessed for the contested violation, and not grant a hearing for the violation Behnke is contesting, because no new evidence has been presented or discovered to indicate that it had a valid dig ticket for the excavation that caused the damage in question.

Sincerely,

Sean C. Mayo, Director  
Pipeline Safety