

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Penalty Assessment
Against

EVERGREEN CONCRETE CUTTING,
INC.

In the amount of \$8,000

DOCKET DG-180901

JOINT NARRATIVE IN SUPPORT OF
SETTLEMENT STIPULATION AND
AGREEMENT

I. INTRODUCTION

1 This Joint Narrative Supporting Settlement Stipulation and Agreement (“Narrative”) is filed pursuant to WAC 480-07-740(3)(a) on behalf of Evergreen Concrete Cutting, Inc. (“Evergreen”) and Staff of the Washington Utilities and Transportation Commission (“Commission Staff”) (together “the Parties”). The Parties have signed the Settlement Stipulation and Agreement (“Agreement”), which is being filed concurrently with this Narrative. This Narrative supports the Agreement and demonstrates that it is consistent with the law and the public interest. It is not intended to modify any terms of the Agreement.

II. PROPOSALS FOR REVIEW PROCEDURE

2 In accordance with WAC 480-07-740, the parties propose the following settlement consideration procedure for review of the proposed Agreement. The parties believe that this matter is a less complex matter under WAC 480-07-740(2)(b). It was set for hearing as a brief adjudicative proceeding, which is available for limited types of proceedings including contested penalty assessments. Accordingly, the parties submit that conducting a hearing will not assist the Commission to decide whether to approve and adopt the settlement. If the Commission conducts a hearing, however, the parties will present one or more witnesses to testify in support of the Agreement and to answer questions concerning the Agreement's

details, costs, and benefits. In addition, counsel for each party will be available to address any legal matters associated with the Agreement.

3 The parties do not intend to file documentation supporting the Agreement, with the exception of the Agreement itself and this Narrative. If the Commission requires supporting documents beyond the Agreement, Narrative, and the other documents on file in this docket, the parties will provide documentation as needed.

III. SCOPE OF THE UNDERLYING DISPUTE

4 The underlying dispute concerns penalties assessed by the Commission against Evergreen for four alleged violations of the Underground Utility Damage Prevention Act, located at chapter 19.122 RCW.

5 On December 8, 2017, the Commission served a penalty assessment of \$8,000 on Evergreen for four alleged violations of RCW 19.122.030(2). The recommended penalty was assessed pursuant to RCW 19.122.055 for failure to notify a one-number locator service and causing damage to a hazardous liquid or underground gas facility. The penalty assessment alleged the following four violations of RCW 19.122,030(2):

1. On March 26, 2017, Evergreen commenced an excavation at 17425 Highway 99, Lynwood, Washington. Prior to commencing this excavation, Evergreen failed to mark the boundary of the excavation area with white paint applied on the ground worksite, then provide notice of the scheduled commencement of excavation to all facility operators through a one-number locator service. This excavation caused damage to a hazardous liquid or gas underground facility.

2. On June 14, 2018, Evergreen commenced an excavation at 23438 28th Avenue South, Des Moines, Washington. Prior to commencing this excavation, Evergreen failed to mark the boundary of the excavation area with white paint applied on the ground worksite, then provide notice of the scheduled commencement of excavation to all facility operators through a one-number locator service. This excavation caused damage to a hazardous liquid or gas underground facility.
3. On June 14, 2018, Evergreen commenced an excavation at 23436 28th Avenue South, Des Moines, Washington. Prior to commencing this excavation, Evergreen failed to mark the boundary of the excavation area with white paint applied on the ground worksite, then provide notice of the scheduled commencement of excavation to all facility operators through a one-number locator service. This excavation caused damage to a hazardous liquid or gas underground facility.
4. On July 6, 2018, Evergreen commenced an excavation at 4821 38th Avenue South-West, Seattle, Washington. Prior to commencing this excavation, Evergreen failed to mark the boundary of the excavation area with white paint applied on the ground worksite, then provide notice of the scheduled commencement of excavation to all facility operators through a one-number locator service. This excavation caused damage to a hazardous liquid or gas underground facility.

6 On December 21, 2018, Evergreen filed a request for hearing to contest the two alleged violations occurring on June 14, 2018, and the alleged violation occurring on July 6,

2018. Evergreen admitted to the alleged violation that occurred on March 26, 2017. On January 30, 2019, the Parties attended a settlement conference with regard to this matter. On February 19, 2018, the parties agreed to the terms of the Agreement in regard to the disputed violations. The Agreement contains the complete terms of the parties' settlement.

IV. DESCRIPTION OF PROPOSED STIPULATION AND SETTLEMENT AGREEMENT

7 The Agreement resolves all of the issues in dispute. The Agreement provides for a penalty against Evergreen in the amount of \$6,000. Evergreen will pay \$2,000 of this amount to the Commission upon approval of the Agreement. The remaining \$4,000 will be suspended upon the condition that Evergreen commit no future violations of chapter 19.122 RCW for a period of one year from the date the Commission approves the Agreement.

8 The Agreement further provides that Evergreen admits to the violation that occurred on March 26, 2015, the first violation that occurred on June 14, 2018, and the violation that occurred on July 6, 2018.

9 Although Staff does not believe the following is legally relevant, Evergreen would like to explain the context surrounding the violations admitted to on June 14, 2018 and also on July 6, 2018. Specifically, Evergreen would like to note that the gas lines damaged had previously been located by PSE pursuant to a call from another contractor. The depth of the lines was not identified. Although the gas lines should have been at least 18" under the pavement at each installation, they were located immediately below the pavement. Evergreen believes that neither the existing locates, nor a locate if called for by Evergreen, could have prevented Evergreen from hitting the gas lines due to their placement at an inappropriate depth below the pavement.

10 The Agreement stipulates that Evergreen did not commit the second violation that occurred on June 14, 2018, at 23436 28th Avenue South, Des Moines, Washington. Commission Staff (Staff) has agreed to this stipulation in light of the explanation provided by the Evergreen employee who was present at the excavation site on June 14, 2018. The Evergreen employee stated that he only commenced one excavation and damaged only one utility line on that date. Although a DIRT report prepared by Puget Sound Energy, Inc. implicates Evergreen in the damage, Staff is willing to withdraw this violation, in light of the Evergreen employee's explanation to Staff and for the purposes of reaching a settlement on the remaining violations.

11 The Agreement provides that Staff will not pursue further enforcement against Evergreen arising out of the excavations described in the penalty assessment in this docket. Staff is not aware of any other potential violations by Evergreen associated with the incident underlying this proceeding, and has no plans for additional enforcement proceedings related to the incidents.

12 In the Agreement, the Parties have agreed that Evergreen is not waiving any current or future legal arguments it may make if there is any future enforcement action brought against it by the Commission. This term includes but is not limited to enforcement associated with future sawcutting that Evergreen contends are not excavations as defined by RCW 19.122.020(8) or falls under the road maintenance exception located in RCW 19.122.031.

13 The Agreement also contains a commitment by Evergreen to make a good faith effort to comply with chapter 19.122 RCW in the future. Staff finds this commitment sincere and credible.

V. STATEMENT OF PARTIES' INTERESTS AND THE PUBLIC INTEREST

14 As stated in the Agreement, the settlement represents a compromise of the positions
of the two parties. The Parties find it is in their best interests to avoid the expense,
inconvenience, uncertainty, and delay inherent in a litigated outcome. Likewise, it is in the
public interest that this dispute conclude without the further expenditure of public resources
on litigation expenses.

15 This Agreement was also entered into in light of WAC 480-07-700, which states,
“[t]he commission supports parties’ informal efforts to resolve disputes without the need for
contested hearings when doing so is lawful and consistent with the public interest.”

16 The Agreement is in the public interest because Evergreen has committed to future
compliance with chapter 19.122 RCW, as a term of the Agreement. Staff believes that
Evergreen has demonstrated a good faith effort to comply with chapter 19.122 RCW, and is
sincere in its commitment to future compliance with chapter 19.122 RCW.

17 This is the first enforcement action brought against Evergreen by the Commission
for violations of chapter 19.122 RCW. Since bringing this enforcement action, Evergreen
has made a good faith effort to comply with chapter 19.122 RCW, and has communicated to
Staff that it now has two full-time employees who are responsible for compliance with
chapter 19.122 RCW. Evergreen’s commitment to compliance as a term of the Agreement is
demonstrated by the fact the Company has submitted 180 requests to locate underground
facilities between January 17, 2019 and January 30, 2019.

18 Staff is satisfied that the Agreement reflects a penalty that is appropriate given the
three violations that Evergreen has admitted to. Further, Staff believes that the suspended
penalty of \$4,000 is sufficient to encourage future compliance by Evergreen.

19 For the purposes of this settlement, Staff is willing to stipulate that Evergreen did not
commit the second alleged violation that occurred on June 14, 2018. As noted above, Staff
is willing to stipulate to this in light of testimony provided to Staff by Evergreen at a
settlement conference that occurred on January 30, 2018. Because Staff is willing to
stipulate to this, the Parties agreed to lower the suspended penalty amount from \$6,000 to
\$4,000 to reflect this stipulation and to facilitate both Parties signing onto the Agreement.

VI. LEGAL POINTS THAT BEAR ON PROPOSED SETTLEMENT

20 In WAC 480-07-700, the Commission states its support for parties' informal efforts
to resolve disputes without the need for contested hearings when doing so is lawful and
consistent with the public interest.

21 Pursuant to WAC 480-07-740, the Commission reviews settlement agreements to
determine whether they comply with applicable legal requirements and whether approval of
the agreements is consistent with the public interest.

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VII. CONCLUSION

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The Agreement resolves all of the issues in this docket and the Parties submit that their resolution complies with applicable legal requirements and is consistent with the public interest. The Parties respectfully request that the Commission issue an order approving the Agreement in its entirety.

Respectfully submitted this 19th day of February, 2019.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

ROBERT W. FERGUSON
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Commission Staff

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Counsel for Evergreen Concrete Cutting, Inc.

Dated: February 19, 2019

Dated: February 26, 2019

VII. CONCLUSION

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The Agreement resolves all of the issues in this docket and the Parties submit that their resolution complies with applicable legal requirements and is consistent with the public interest. The Parties respectfully request that the Commission issue an order approving the Agreement in its entirety.

Respectfully submitted this 19th day of February, 2019.


WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

ROBERT W. FERGUSON
Attorney General

JOE DALLAS
Assistant Attorney General
Counsel for Utilities and Transportation
Commission Staff

Dated: February 19, 2019

EVERGREEN CONCRETE CUTTING, INC.



Matt Taylor
Title: President

Dated: February 19, 2019

Approved as to form:

PAUL R. GRESSMAN, JR.
Counsel for Evergreen Concrete Cutting, Inc.

Dated: February 19, 2019