

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**NOTICE OF PENALTIES INCURRED AND DUE
FOR VIOLATIONS OF LAWS AND RULES**

PENALTY ASSESSMENT: DG-210373
PENALTY AMOUNT: \$10,000
Investigation # 8229

EMAIL SERVICE

Tri City Excavation LLC,
and BMI Construction LLC
1248 Riesling St
Richland WA 99352
Mikeborshch@hotmail.com

Tri-City UBI: 602-851-695
BMI UBI: 604-684-127
Phone: (509)308-5747

The Washington Utilities and Transportation Commission (Commission) believes that Tri-City Excavation LLC (Tri-City) and BMI Construction LLC (BMI or, together with Tri-City, Company) has violated the Revised Code of Washington (RCW) 19.122.055(1)(a) by failing to request a dig ticket before excavation and damaging an underground natural gas facility. RCW 19.122.055 states, in part, that any excavator who fails to notify a one-number locator service no less than two full business days before excavating and causes damage to a hazardous liquid or gas facility is subject to a civil penalty of not more than \$10,000 for each violation.

Commission staff (Staff) conducted an investigation that included reviewing damage reports submitted by Cascade Natural Gas Corporation (CNGC) that identified a natural gas damage event involving Tri-City.

Staff researched Tri-City and BMI records at the Departments of Revenue (DOR) and Labor and Industries (L&I). DOR has UBI account numbers for both of the Companies listed as active with the same principals and addresses on both accounts. L&I also has Tri-City and BMI accounts with the same principals and same addresses listed for both. The Tri-City L&I account is closed/inactive while the BMI account remains active and current.

According to the Secretary of State's list of registered corporations, Tri-City administratively dissolved in the first quarter of 2019, but BMI has an active registration with the same governance and address as Tri-City, and a formation date of December 14, 2020.

Based on this research, Staff believes that Tri-City and BMI are the same entity because the same individuals and addresses are identified under each account in the records of three state government agencies.

For this reason, the Commission will consider Tri-City and BMI as the same entity for the purpose of enforcement of Washington state Dig Law and Commission regulations. Accordingly, the

Commission hereby notifies you that it is assessing a penalty of \$10,000 against you on the following grounds:

On July 20, 2017, the Commission mailed an Alleged Violation of Washington Dig Law letter to the Company. The letter included detailed information about Washington State's underground utility damage prevention act, requirements for submitting utility locate requests before excavating, and the possibility of penalties for each violation. The Commission mailed the letter after it received a report of damage caused by the Company on May 2, 2017, that occurred because the Company failed to submit a request to locate underground utilities before excavating.

On October 7, 2019, the Commission assessed a \$6,000 penalty against the Company for three violations of RCW 19.122.055(1)(a). On January 24, 2018, March 25, 2019, and May 1, 2019, Tri-City excavation failed to notify the One-Number to locate service before beginning excavation and caused damage to natural gas facilities. The Company failed to respond to inquiries during that investigation process and failed to provide a required response to the notice.

Tri-City failed to respond to repeat notices sent by the Commission and the Assistant Attorney General. Because the Company failed to respond, the case was sent to a collection agency.

On May 8, 2020, the Company was excavating at 7184 Napoli St., West Richland, Washington. While operating a backhoe a Company worker struck and damaged an underground CNGC gas facility. The Damage Information Reporting Tool report submitted by CNGC on June 2, 2020, indicated that the Company was excavating without a valid request to locate underground utilities.

Staff conducted an investigation that included reviewing damage reports, communications with CNGC, and the One-Call Ticket database. Staff initiated contact with the Company seeking further information or documentation but, as of the date of this Penalty Assessment, Staff has not received any additional information regarding the facts in this case. The documents reviewed identified a natural gas event that involved the Company damaging a natural gas line while excavating without a valid locate ticket.

Due to the Company's repeated violations of the Dig Law, Staff recommends the Commission assess a \$10,000 penalty against the Company for one violation of RCW 19.122.055(1)(a) for failing to provide the required notice to a one-number locator service before excavating and causing damage to an underground natural gas facility for the violation that occurred on May 8, 2020.

These facts, if not contested or if proved at a hearing and not rebutted or explained, are sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe the violation did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in writing. Or, if there is a reason for the violation that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of the penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of

law or fact require consideration of evidence and resolution in a hearing. Any request to contest the violation or for mitigation of the penalty must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. *See* RCW 81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation or application for mitigation in a Brief Adjudicative Proceeding before an administrative law judge. The administrative law judge will consider the evidence and will notify you of their decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the \$10,000 penalty amount due; or
- Request a hearing to contest the occurrence of the violation; or
- Request mitigation to reduce the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

If you do not act within 15 days, the Commission may refer this matter to the Office of the Attorney General for collection. The Commission may then sue you to collect the penalty.

DATED at Lacey, Washington, and effective June 24, 2021.

/s/ Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-210373, Investigation # 8229

PLEASE NOTE: You must complete and sign this document and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed.

I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements:

1. **Payment of penalty.** I admit that the violation occurred and enclose \$10,000 in payment of the penalty.

2. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below (**if you do not include reasons supporting your contest here, your request will be denied**):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

OR b) I ask for a Commission decision based solely on the information I provided above.

3. **Request mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reasons set out below (**if you do not include reasons supporting your application here, your request will be denied**):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

OR b) I ask for a Commission decision based solely on the information I provided above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: _____ [Month/Day/Year], at _____ [City, State]

Name of Respondent (Company) – please print

Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime,

and the actor's mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony."