

BEFORE THE WASHINGTON STATE

UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Penalty)
 Assessment Against)
)
 TOWN & COUNTRY TREE SERVICE) Docket No. DG-160328
)
 In the Amount of \$1,000)
)
)

BRIEF ADJUDICATIVE PROCEEDING, VOLUME I

Pages 1-65

ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

9:38 a.m.

June 21, 2016

Washington Utilities and Transportation Commission
 1300 South Evergreen Park Drive Southwest
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A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE:

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ALSO PRESENT:

Anthony Dorrrough
Scott Anderson
Derek Norwood
Lynda Holloway

* * * * *

HEARING
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1 OLYMPIA, WASHINGTON; JUNE 21, 2016

2 9:38 A.M.

3 P R O C E E D I N G S

4
5 JUDGE PEARSON: Okay. Good morning. My
6 name is Rayne Pearson. I'm an administrative law judge
7 with the Utilities and Transportation Commission, and I
8 am the presiding officer for today's hearing being held
9 at the Commission's headquarters in Olympia.

10 Today is Tuesday, June 21st, 2016, and the
11 time is approximately 9:38 a.m.

12 Today's proceeding involves a total of three
13 companies that have requested hearings to mitigate
14 penalties they received for failing to request a dig
15 ticket prior to performing an excavation. And the first
16 thing I'll do is take a roll call to determine which
17 companies are present.

18 And because there is a court reporter here
19 today creating a record of today's proceedings, please
20 give a verbal response to the roll call, like "here" or
21 "present" in addition to raising your hand when I call
22 your company's name.

23 The first is Docket DG-160164, Watterson
24 Excavation, Inc.

25 MR. BOREN: Yes, present.

1 JUDGE PEARSON: Thank you. And next is
2 Docket DG-160174, Woodland Industries General
3 Contracting, Inc.

4 MR. ROGERS: Present.

5 JUDGE PEARSON: Thank you. And finally
6 Docket DG-160328, Town & Country Tree Service.

7 MR. MOORE: Here. It says Woodland
8 Industries on mine.

9 JUDGE PEARSON: Maybe you were given a copy
10 of someone else's exhibits. Mr. Shearer has a copy for
11 you, though, of -- if you represent Town & Country Tree
12 Service, he has that for you.

13 MR. SHEARER: Yeah. I think there's just a
14 typo on the service letter.

15 JUDGE PEARSON: Oh, okay.

16 MR. SHEARER: Our office accidentally used
17 the same fill-in on the subject line.

18 JUDGE PEARSON: Gotcha. Okay.

19 MR. SHEARER: But the actual exhibits and
20 dockets are all --

21 JUDGE PEARSON: They're all correct. Okay.
22 So the purpose of today's proceeding is to
23 allow each of you an opportunity to explain the
24 circumstances that led to the violations and why you
25 believe the penalty should be reduced. So I will call

1 each of you up to do that individually. And once you're
2 finished, Staff will make a recommendation, and then you
3 will have an opportunity to briefly respond to that
4 recommendation.

5 So in a few minutes I will call each company
6 forward, and at that time I will swear you in with the
7 oath of witness, so anything you tell the Court will be
8 under oath and will be considered sworn testimony.

9 And again, with the court reporter recording
10 everything that's said today, please speak slowly and
11 clearly, and please also be sure to use the microphone
12 that's on the table here. You'll know the microphone is
13 on when the red light is illuminated.

14 Once you're sworn in, you can present your
15 case. And I won't be making any decisions today, but I
16 will take everything under advisement and issue an order
17 in each docket within ten days. So once you've
18 presented your case and Staff makes a recommendation,
19 you're free to leave and then we will move on to the
20 next docket.

21 So first let's take an appearance from
22 Commission staff.

23 MR. SHEARER: Good morning, your Honor. My
24 name is Brett Shearer. I'm Assistant Attorney General
25 on behalf of Commission staff.

1 JUDGE PEARSON: Thank you. Does Staff have
2 any general opening statement or testimony to give this
3 morning?

4 MR. SHEARER: No. The documents are fairly
5 straightforward, and the cases are fairly
6 straightforward, and we're just going to give you all
7 the facts we have.

8 JUDGE PEARSON: Okay. Sounds good.

9 So the first docket is DG-160164, Watterson
10 Excavation, Inc.

11 If you could step forward to this seat.

12 MR. BOREN: This one?

13 JUDGE PEARSON: Yes. If you could just make
14 sure that that microphone is turned on and the red light
15 comes on.

16 MR. BOREN: Okay.

17 JUDGE PEARSON: Okay. So can you state your
18 name and address for the record, spelling your last name
19 for the court reporter, please?

20 MR. BOREN: Brad Boren, B-O-R-E-N, and my
21 address or the office address?

22 JUDGE PEARSON: The office address.

23 MR. BOREN: Okay. 718 Griffin Avenue,
24 No. 90, Enumclaw.

25 JUDGE PEARSON: Okay. And a phone number?

DIRECT TESTIMONY BY MR. BOREN

8

1 MR. BOREN: (253) 334-2674.

2 JUDGE PEARSON: And an e-mail address?

3 MR. BOREN: Brad@wattersonexcavating.com.

4 JUDGE PEARSON: Okay. And what position do
5 you hold with the company?

6 MR. BOREN: General manager.

7 JUDGE PEARSON: Okay. Okay. So at this
8 point I will swear you in. If you would please stand
9 and raise your right hand.

10

11 BRAD BOREN, witness herein, having been
12 first duly sworn on oath,
13 was examined and testified
14 as follows:

15

16 JUDGE PEARSON: Okay. You can have a seat
17 and go ahead and proceed when you're ready.

18 *** DIRECT TESTIMONY BY MR. BOREN ***

19 MR. BOREN: Okay. Pretty quick, we're not
20 denying that we didn't have the locates. I just wanted
21 to -- we had been -- had a visit from Anthony
22 Dorrough --

23 JUDGE PEARSON: Um-hmm.

24 MR. BOREN: -- from the Utility Commission,
25 and kind of went through some things. And I just wanted

DIRECT TESTIMONY BY MR. BOREN

9

1 to make sure that the two prior no locates were from
2 2013; the last one, the third one, was in 2015.

3 We've gone through major changes in our
4 office, hired a person that does nothing but takes care
5 of this for at least four to six hours a day, between
6 talking to the utility people to get them to the right,
7 correct spot, because a lot of work that we do is new
8 construction, hard-to-find addresses, things like that,
9 numerous meetings with our guys.

10 We've made changes -- huge changes to make
11 sure this doesn't happen through paperwork, through just
12 making sure our guys understand what's going on. We
13 went through some stuff with PSE, just wanted to make
14 sure that our side of it was -- this was unfortunate
15 that it was our third time, but it was -- and hasn't
16 happened since. Unfortunately, a new employee doing
17 something that he wasn't supposed to do, but with our
18 two previous infractions in 2013, this was the third
19 one.

20 So I understand -- I just wanted to plead my
21 case and say that we're not taking it lightly and we're
22 not just pushing it to the side. We've made huge
23 strides to make sure it doesn't happen again.

24 JUDGE PEARSON: Okay. Thank you.

25 Mr. Shearer, do you have any questions for

DIRECT TESTIMONY BY MR. BOREN

1 Mr. Boren?

2 MR. SHEARER: No, your Honor.

3 JUDGE PEARSON: Okay. And is Staff prepared
4 to make a recommendation?

5 MR. SHEARER: Yes, your Honor.

6 JUDGE PEARSON: Okay. You can do that at
7 this time. Or did you want to call a witness?

8 MR. SHEARER: I would call Mr. Dorrough to
9 explain his recommendation.

10 JUDGE PEARSON: Perfect. And I will just
11 swear you in.

12 Can you turn your microphone on?

13 MR. DORROUGH: Sure.

14 JUDGE PEARSON: Okay. If you will raise
15 your right hand.

16

17 ANTHONY DORROUGH, witness herein, having been
18 first duly sworn on oath,
19 was examined and testified
20 as follows:

21

22 JUDGE PEARSON: Okay. You may be seated.

23 Go ahead.

24 / / /

25 / / /

DIRECT EXAMINATION BY MR. SHEARER / DORROUGH 11

1 *** DIRECT EXAMINATION BY MR. SHEARER ***

2 BY MR. SHEARER:

3 Q. Can you please state your name and spell your
4 last name for the record?

5 A. My name is Anthony Dorrough, spelled
6 D-O-R-R-O-U-G-H.

7 Q. And Mr. Dorrough, what is your role here at the
8 Commission?

9 A. I'm a pipeline safety engineer.

10 Q. And what was your role here in this docket,
11 Docket 160164?

12 A. Investigation of an incident where there were
13 alleged violations of the dig law.

14 Q. And you heard the previous testimony this
15 morning. Is that an accurate -- was that testimony
16 accurate from your perspective?

17 A. Yes, it was.

18 Q. Okay. And this was the company's third
19 violation; is that correct?

20 A. I believe so. From my report -- actually, it
21 says here, if I remember, on July 20th, 2015, was the
22 violation, but in our previous -- it said there were
23 three previous damage incidents before this one.

24 Q. Well, let me go back then.

25 A. Sure.

DIRECT EXAMINATION BY MR. SHEARER / DORROUGH 12

1 Q. I'll hand you a document here.

2 A. Yeah.

3 Q. Do you recognize this document, Mr. Dorrough?

4 A. Yes, I do.

5 Q. What is that document?

6 A. This is our investigation incident form.

7 Q. And does this document accurately summarize your
8 investigation and findings in the course of this docket,
9 Docket DG-160164?

10 A. Yes.

11 Q. Thank you.

12 MR. SHEARER: Your Honor, and I would move
13 to have that admitted in this case.

14 JUDGE PEARSON: Okay. Mr. Boren, do you
15 have any objection to admitting that?

16 MR. BOREN: No. I don't know if I've seen
17 it, but --

18 JUDGE PEARSON: Did you give him a copy?

19 MR. SHEARER: Yes.

20 JUDGE PEARSON: Okay. It's in the packet.

21 MR. SHEARER: And I have another copy if you
22 need it.

23 MR. BOREN: It's in this one? Yeah, it's
24 not --

25 JUDGE PEARSON: Okay. So I will admit that

DIRECT EXAMINATION BY MR. SHEARER / DORROUGH 13

1 and mark it as Exhibit AD-1.

2 MR. SHEARER: Thank you.

3 (Exhibit No. AD-1 was marked and
4 admitted into evidence.)

5 MR. SHEARER: And while we're doing this,
6 we'll authenticate the second document, Judge Pearson,
7 if that's all right.

8 JUDGE PEARSON: Sure.

9 BY MR. SHEARER:

10 Q. I'm going to hand you a second document,
11 Mr. Dorrough.

12 A. Okay.

13 Q. Do you recognize that document?

14 A. Yes.

15 Q. And what is that document?

16 A. It is a dirt damage report.

17 Q. Did you rely on this document and review this
18 document in the course of your investigation?

19 A. Yes, I did.

20 MR. SHEARER: Your Honor, I'd move to have
21 this -- the dirt ticket admitted as well as
22 Exhibit AD-2.

23 JUDGE PEARSON: Okay. And Mr. Boren, do you
24 have any objection?

25 MR. BOREN: No.

DIRECT EXAMINATION BY MR. SHEARER / DORROUGH 14

1 JUDGE PEARSON: Okay. Then I will admit
2 that and mark it as Exhibit AD-2.

3 (Exhibit No. AD-2 was marked and
4 admitted into evidence.)

5 BY MR. SHEARER:

6 **Q. Now, Mr. Dorrough, what was your recommended**
7 **penalty in this case?**

8 A. Okay. My report, because of three previous
9 violations resulting in a \$4,000 penalty assessment, and
10 a demonstrated lack of understanding about following
11 procedure -- proper procedure in regard to public
12 safety related to Washington State law --

13 (Interruption by the reporter.)

14 MR. DORROUGH: Because of three previous
15 violations resulting in a \$4,000 penalty assessment, a
16 demonstrated lack of understanding about following
17 proper procedure regarding to public safety related to
18 Washington State law, and a short span of time between
19 their penalty assessment in April 2015, Staff recommends
20 that Watterson be issued a \$10,000 penalty for the
21 latest violation.

22 BY MR. SHEARER:

23 **Q. And you base your investigation on -- and your**
24 **recommendation on the dirt report, contact with the**
25 **utility and contact with the company; is that correct?**

DIRECT EXAMINATION BY MR. SHEARER / DORROUGH**15**

1 A. Correct.

2 MR. SHEARER: Thank you, Mr. Dorrough.

3 MR. DORROUGH: Okay.

4 MR. SHEARER: I have no further questions,
5 your Honor.

6 JUDGE PEARSON: Okay. I have just one
7 question. I was curious if the dig safety training is
8 still available. I know that was going on, and that is
9 probably a question for Mr. Dorrough.

10 MR. DORROUGH: Say that again.

11 JUDGE PEARSON: Is the dig law safety
12 training still available?

13 MR. DORROUGH: I'm not quite sure.

14 JUDGE PEARSON: Okay.

15 MR. DORROUGH: I think it was available, but
16 I don't know what the status is right now.

17 JUDGE PEARSON: Ms. Holloway is nodding yes,
18 that it is still available.

19 MR. DORROUGH: All right.

20 JUDGE PEARSON: Is that available on an
21 ongoing basis, Ms. Holloway?

22 MS. HOLLOWAY: They don't have set dates,
23 but they usually try to do two, three, four of them a
24 year. Just depends on the schedule of the trainer. But
25 that's through the NUCA Dig Safe training, and they

DIRECT EXAMINATION BY MR. SHEARER / DORROUGH 16

1 can --

2 JUDGE PEARSON: Through the what?

3 MS. HOLLOWAY: NUCA.

4 JUDGE PEARSON: N-U-C-A?

5 MS. HOLLOWAY: Yes.

6 JUDGE PEARSON: Okay. Thank you.

7 And Mr. Boren, did you want to respond to
8 Staff's recommendation?

9 MR. BOREN: I just had a question on that.
10 On the training, was that through the 811? I've been in
11 contact with Don Evans, and I don't know if that's
12 something totally separate, but he's through 811, and
13 PSE is how I was contacted.

14 MS. HOLLOWAY: So Don Evans does training
15 with Washington 811; NUCA Dig Safe training is separate
16 from that. You could have Don come in and do training
17 on-site, and then if you want to schedule training,
18 like, a full day NUCA Dig Safe training, you can
19 schedule that through NUCA. And sometimes the safety
20 committee will also offer Dig Safe training through
21 NUCA, too.

22 JUDGE PEARSON: Okay. Thank you,
23 Ms. Holloway. I'm glad you're here.

24 Okay. Did you have anything further,
25 Mr. Boren?

DIRECT EXAMINATION BY MR. SHEARER / DORROUGH 17

1 MR. BOREN: No.

2 JUDGE PEARSON: Okay. All right. Nothing
3 further from Staff?

4 MR. SHEARER: Nothing further from Staff,
5 your Honor.

6 JUDGE PEARSON: Okay. Thank you. Then
7 Mr. Boren, you are free to go.

8 MR. BOREN: Okay.

9 JUDGE PEARSON: And thank you for coming
10 this morning. Okay.

11 And I'll call the next docket, DG-160174,
12 Woodland Industries General Contracting, Inc. If you
13 could please come forward. If you could just go ahead
14 and take a seat at the table and make sure that the
15 microphone is turned on.

16 If you could state your name for the record,
17 spelling your last name.

18 MR. ROGERS: Lee Rogers, R-O-G-E-R-S.

19 JUDGE PEARSON: Okay. And what's your
20 position with the company?

21 MR. ROGERS: I'm the general manager.

22 JUDGE PEARSON: Okay. Can you give us an
23 address, phone number and e-mail address?

24 MR. ROGERS: Company address is 10715 66th
25 Avenue East, Puyallup, Washington 98373.

DIRECT TESTIMONY BY MR. ROGERS

18

1 JUDGE PEARSON: Okay. And a phone number?

2 MR. ROGERS: (253) 770-9663.

3 JUDGE PEARSON: And an e-mail address?

4 MR. ROGERS: Lee@woodlandindustries.net.

5 JUDGE PEARSON: Okay. Thank you. And if
6 you could please stand and raise your right hand, I will
7 swear you in.

8

9 LEE ROGERS, witness herein, having been
10 first duly sworn on oath,
11 was examined and testified
12 as follows:

13

14 JUDGE PEARSON: Okay. Go ahead and be
15 seated. And you can go ahead whenever you're ready.

16 *** DIRECT TESTIMONY BY MR. ROGERS ***

17 MR. ROGERS: So we were notified about two
18 situations that happened -- I'm not positive on the
19 dates -- over the last two years. The first one is a
20 site in the Lakewood area. I think most people are
21 familiar with the site. It's adjacent to the -- I can't
22 remember the name of it -- Army surplus store.

23 JUDGE PEARSON: Okay.

24 MR. ROGERS: This is -- they own multiple
25 properties behind their building. And we were -- we

DIRECT TESTIMONY BY MR. ROGERS

19

1 were working on another adjacent property for a
2 different owner, and we were contacted about demolishing
3 a maybe 80-year-old home that had been vacant for, I
4 think, nearly 30 years. And it wasn't new construction.
5 Everything above the ground. No foundation, no footings
6 or anything on this place.

7 Anyway, so we -- we were in communication
8 with the owner. We'd also walked the site. Because we
9 had the gas company out and the water company out at the
10 neighboring properties, we were in communication with
11 Lakewood Water and we were in communication with Puget
12 Sound Energy, and there were no utilities on this site.
13 They'd been abandoned some 30 plus years ago.

14 And in the process, I think just a couple
15 short -- maybe an hour into doing the project, we came
16 in with our excavator and there was no -- there was no
17 gas utility pipe exposed because it came up inside the
18 house, in that they had done an addition, so it was --
19 so we didn't even have any idea that there was a pipe
20 there. But regardless, we were under the understanding
21 that everything was abandoned at the street.

22 In the process of bringing the equipment
23 around, we rotated the equipment, setting up at one
24 corner of house, and when we did, it pulled up some
25 shrubbery, and that shrubbery exposed the

DIRECT TESTIMONY BY MR. ROGERS

20

1 I-don't-know-how-many-year-old -- many, many,
2 many-year-old gas pipe that was literally at the
3 surface, within one inch of the top of the surface. And
4 when we disrupted that shrub, it broke the rotten gas
5 pipe off. And that's it for that location. That's the
6 Lakewood address.

7 JUDGE PEARSON: So how deep did you excavate
8 there?

9 MR. ROGERS: We didn't excavate.

10 JUDGE PEARSON: You didn't excavate?

11 MR. ROGERS: No.

12 JUDGE PEARSON: You just pulled out a shrub?

13 MR. ROGERS: No -- well, we were demolishing
14 the house, but the house was -- it was just an old -- an
15 old house that was all above grade.

16 JUDGE PEARSON: So you weren't actually
17 digging?

18 MR. ROGERS: We didn't dig anything.

19 JUDGE PEARSON: Which is why you didn't call
20 for a locate; is that --

21 MR. ROGERS: Well, typically we do anyway,
22 just out of habit, and I don't know why it didn't happen
23 there. But coincidentally, on that one, it -- we
24 didn't. At the house next-door we did.

25 JUDGE PEARSON: Okay.

DIRECT TESTIMONY BY MR. ROGERS

21

1 MR. ROGERS: At this one we didn't.

2 JUDGE PEARSON: Okay. And you said that the
3 gas pipe was just an inch underground?

4 MR. ROGERS: If that. Where it came out of
5 the ground, it was -- it was at the surface --

6 JUDGE PEARSON: Okay.

7 MR. ROGERS: -- and completely rusted
8 through. You could have -- a child could have broken
9 it.

10 JUDGE PEARSON: Okay. Okay. Go ahead.

11 MR. ROGERS: And that's it for the Lakewood
12 address.

13 The second address is where they're doing
14 the construction near the Emerald Queen in Tacoma. We
15 were doing some work for the Puyallup Tribe at the
16 property where they're doing their new parking garage.
17 I think this is -- let's see -- 20 --

18 JUDGE PEARSON: Is it near the parking lot?

19 MR. ROGERS: The address is 2802 East R
20 Street, intersecting with East 32nd.

21 JUDGE PEARSON: Sorry. And what were you
22 doing there?

23 MR. ROGERS: Same thing. We were
24 demolishing a home.

25 JUDGE PEARSON: Near a parking garage at the

DIRECT TESTIMONY BY MR. ROGERS

22

1 casino?

2 MR. ROGERS: There's massive excavation for
3 a new parking garage going on now --

4 JUDGE PEARSON: Okay.

5 MR. ROGERS: -- not by us.

6 JUDGE PEARSON: Okay. Go ahead.

7 MR. ROGERS: Okay. June 19th we called for
8 locates for work to begin that following week. We
9 worked there -- there were multiple structures
10 on-site -- it's a large piece of property -- and we had
11 demolished the house shortly after that.

12 And then on 9/21, there was an incident
13 where we were digging and we -- I mean, we weren't
14 digging very deep, but we were digging to remove some of
15 the debris from on-site -- I think large boulders and
16 old concrete that had been left over from years
17 before -- and on September 21st we hit a gas line.

18 We called construction services with PSE,
19 they came out and the crews were baffled. They actually
20 spent a couple hours there that night, and they came
21 back -- I think they were there for just about a week
22 straight, and they were frustrated because there were
23 zero records of this gas pipe being in the location
24 where it was. They had -- they actually had no record
25 of this gas pipe being there.

DIRECT TESTIMONY BY MR. ROGERS

23

1 JUDGE PEARSON: Are you talking about PSE?

2 MR. ROGERS: Yes.

3 JUDGE PEARSON: Okay. And so what you're
4 saying is you called for locates on June 19th for that
5 same location where --

6 MR. ROGERS: Yes.

7 JUDGE PEARSON: -- the violation ended up
8 occurring?

9 MR. ROGERS: Yes. And we were very familiar
10 with it. We knew where the -- where the locates were,
11 and there was nothing on the site. And we were working
12 there for -- I don't know. We ended up working on the
13 site for about four and a half months.

14 JUDGE PEARSON: Okay. And that's why you
15 didn't call for a new locate prior to digging,
16 because --

17 MR. ROGERS: There were -- there was nothing
18 on the site.

19 JUDGE PEARSON: So what I asked was, when
20 you called on June 19th and there were no locates,
21 nothing was located, you relied on that when you did the
22 excavation in September?

23 MR. ROGERS: There was only water on the
24 site, and we knew where that was.

25 JUDGE PEARSON: Okay.

DIRECT TESTIMONY BY MR. ROGERS

24

1 MR. ROGERS: And there were no other
2 utilities on the site, as far as the information that we
3 were provided. And as it turned out, I don't know if
4 you have access to those records, but Puget Sound Energy
5 did not know the gas line was on the site.

6 JUDGE PEARSON: Okay. Thank you. Was that
7 it for now?

8 MR. ROGERS: That's it. We do tons of
9 locates, and so it's not the first one. Very, very
10 rarely, you know, are we doing a demolition that we
11 don't. That was kind of an oddity that we didn't, but
12 there was no excavation on the site.

13 JUDGE PEARSON: Okay. And is it your --

14 MR. ROGERS: I just recently let go of
15 pictures. I mean, we had several pictures from this
16 project. I didn't know this was coming up.

17 JUDGE PEARSON: Is it your position that, in
18 demolishing a house where you're not doing any
19 excavation, even though you do routinely call for
20 locates, it wouldn't be technically required in that
21 situation?

22 MR. ROGERS: Well, we also do site cleanup
23 where we're -- this was -- this was -- this was a
24 dilapidated, collapsed roof home. It was more of a site
25 cleanup. We do a lot of site cleanups where it's not --

DIRECT TESTIMONY BY MR. ROGERS

25

1 this was apparently still a house. It was -- like I
2 said, it had been abandoned for well over 30 years.

3 JUDGE PEARSON: Okay. But that didn't
4 answer my question.

5 So my question was, is your position that
6 this type of work that you did didn't technically
7 require a locate because you weren't intending to --

8 MR. ROGERS: My understanding is technically
9 it did not require a locate.

10 JUDGE PEARSON: Okay.

11 MR. ROGERS: Typically we would anyway
12 because it's similar to a -- similar to a demolition
13 project. But we knew there was no excavation on this
14 site, and maybe that's why -- maybe that's why we
15 didn't.

16 JUDGE PEARSON: Okay. Thank you.

17 MR. ROGERS: But I think there are -- I'm
18 hoping Puget Sound Energy or someone has pictures, but
19 this was -- this was a surface pipe, and it was -- like
20 I said, it was well over 30 years abandoned.

21 JUDGE PEARSON: Okay.

22 MR. ROGERS: Okay.

23 JUDGE PEARSON: Thank you.

24 Mr. Shearer?

25 MR. SHEARER: Just a few brief questions,

CROSS-EXAMINATION BY MR. SHEARER / ROGERS

26

1 your Honor.

2 JUDGE PEARSON: Okay.

3 *** CROSS-EXAMINATION BY MR. SHEARER ***

4 BY MR. SHEARER:

5 Q. I'll split this into the two instances. The
6 first instance I'll call the Lakewood instance for
7 everybody's comprehension.

8 Now, you testified you usually call on locates,
9 is that correct --

10 A. Correct.

11 Q. -- for these types of jobs?

12 And you testified that you used an excavator on
13 the site; is that correct?

14 A. That's correct. That's what we used to do a lot
15 of our site cleanups.

16 Q. And you pulled out a bush out of the ground; is
17 that correct?

18 A. I --

19 Q. Or a bush came out of the ground?

20 A. A bush came out of the ground --

21 Q. A bush came out of the ground due to the work
22 you were performing; is that correct?

23 A. Yes. In mobilizing the equipment, a bush came
24 out of the ground.

25 Q. And you agree that you didn't call in for a

CROSS-EXAMINATION BY MR. SHEARER / ROGERS**27**

1 **locate ahead of time; is that correct?**

2 A. Records indicate we did not call in for a
3 locate.

4 **Q. Thank you. That's all on the first instance.**

5 **On the second instance, the Tacoma -- I'll refer**
6 **to it as the Tacoma instance, you testified that the**
7 **address at the location was 2802 East R Street, Tacoma,**
8 **Washington; is that correct?**

9 A. Yes.

10 **Q. And was that the same address that was given in**
11 **the call-in log?**

12 A. I'm sorry. It's 28 -- for some reason, my
13 secretary had handwritten down 2802, but all of our
14 records on the project previous to that, our permits and
15 whatnot, are 2800 --

16 **Q. Thank you.**

17 A. -- and that's the address that we called in.

18 MR. SHEARER: Thank you. I have no further
19 questions, your Honor.

20 JUDGE PEARSON: Okay. Thank you. Did you
21 want to call your witness?

22 MR. SHEARER: Yes. Mr. Scott Anderson.

23 JUDGE PEARSON: Okay. Mr. Anderson, if you
24 could raise your right hand.

25 / / /

1 SCOTT ANDERSON, witness herein, having been
2 first duly sworn on oath,
3 was examined and testified
4 as follows:

5
6 JUDGE PEARSON: Go ahead and have a seat,
7 sir.

8 And Mr. Shearer, you can proceed when you're
9 ready.

10 MR. SHEARER: Thank you, your Honor.

11 *** DIRECT EXAMINATION BY MR. SHEARER ***

12 BY MR. SHEARER:

13 Q. Could you state your name, Mr. Anderson, and
14 spell your last name for the record?

15 A. Scott Anderson, A-N-D-E-R-S-O-N.

16 Q. And what is your position here at the
17 Commission, Mr. Anderson?

18 A. Pipeline safety engineer.

19 Q. And what is your role in this docket, Docket
20 DG-160174?

21 A. We did the investigation of a dig law violation.

22 Q. So you have personal knowledge of this docket
23 and the information involved?

24 A. Yeah.

25 Q. Would you please summarize your investigation --

1 A. So --

2 **Q. -- and findings? Excuse me.**

3 A. Basically for the incident that occurred in
4 Tacoma, the East R address, the 2802, I was contacted by
5 Dana Schmidt from Woodland Industries. She basically
6 told me that the address was incorrect, and there were
7 also dig tickets that were called in for that location.

8 And then as for the Lakewood address, Dana had
9 also -- had told me that there were -- they didn't call
10 in locates, and she said it was a stump, but it sounds
11 like it was a bush. But yeah, when it was -- when it
12 was moved, it pulled the gas line out. And there were
13 no known locates.

14 **Q. And what information did you rely on in the**
15 **course of your investigation?**

16 A. So we check the dirt report, which is submitted
17 by PSE. Also there's a website that we check, the
18 National Ticket Management System, and you can look up
19 dates, company names, and it basically just gives you
20 information of did they call in for that date for that
21 location. And I also -- also contact with company.

22 MR. SHEARER: So I'm going to go through and
23 authenticate the documents now.

24 JUDGE PEARSON: Sure.

25 MR. SHEARER: We'll get that out of the way.

1 BY MR. SHEARER:

2 Q. Mr. Anderson, I'm going to hand you a document
3 here.

4 Do you recognize this document?

5 A. Yeah. This is the incident investigation form.
6 It's the -- basically, it's the form we fill out to
7 basically tell our chief engineer that these companies,
8 this happened with the dig law. I mean, as a
9 description, facts, causes, and then regulatory analysis
10 and then what Staff recommends.

11 Q. And does this document accurately reflect your
12 investigation and findings in this docket?

13 A. Yes.

14 MR. SHEARER: Your Honor, I'll move to admit
15 this dirt ticket as Exhibit -- or excuse me -- this
16 investigation report as Exhibit SA-1.

17 JUDGE PEARSON: Okay. Do you have any
18 objection?

19 MR. ROGERS: No.

20 JUDGE PEARSON: Okay. I will go ahead and
21 admit that and mark it as Exhibit SA-1.

22 (Exhibit No. SA-1 was marked and
23 admitted into evidence.)

24 BY MR. SHEARER:

25 Q. Okay. Mr. Anderson, I'm going to hand you a

1 **second document now, and if you could take a moment and**
2 **tell me if you recognize that document.**

3 A. This is the dirt report which is submitted by
4 PSE for the Lakewood address.

5 **Q. And did you rely on this document in the course**
6 **of your investigation?**

7 A. Yes.

8 MR. SHEARER: I'll move to admit this
9 document as Exhibit SA-2, your Honor.

10 JUDGE PEARSON: Okay. Mr. Rogers, do you
11 have any objection?

12 MR. ROGERS: Can I see them so I know what
13 I'm accepting?

14 JUDGE PEARSON: Yes.

15 MR. SHEARER: We did serve -- I have an
16 extra copy.

17 JUDGE PEARSON: Okay.

18 MR. SHEARER: We did serve copies.

19 (Brief discussion off the record.)

20 MR. ROGERS: Yes. I'm okay with that.

21 JUDGE PEARSON: Okay. Then I will go ahead
22 and admit that and mark it as Exhibit SA-2.

23 (Exhibit No. SA-2 was marked and
24 admitted into evidence.)

25 / / /

1 BY MR. SHEARER:

2 Q. I'm going to hand you a third document now,
3 Mr. Anderson.

4 Do you recognize this document?

5 A. Yeah. This is another dirt report submitted by
6 PSE for the Tacoma address.

7 Q. And what address is indicated on there?

8 A. 2800 East R Street, Tacoma.

9 Q. And did you rely on this document in the course
10 of your investigation?

11 A. Yes.

12 MR. SHEARER: I move to admit that document
13 as Exhibit SA-3, your Honor.

14 JUDGE PEARSON: Okay. Mr. Rogers, do you
15 have any objection?

16 MR. ROGERS: No.

17 JUDGE PEARSON: Hmm?

18 MR. ROGERS: I have no objection.

19 JUDGE PEARSON: Okay. Then I will go ahead
20 and admit that exhibit and mark it as SA-3.

21 (Exhibit No. SA-3 was marked and
22 admitted into evidence.)

23 BY MR. SHEARER:

24 Q. I'm going to hand you a fourth document now,
25 Mr. Anderson.

1 **Do you recognize this document?**

2 A. Yeah. This is the first dig ticket dated
3 June 19, 2015, for the Tacoma address.

4 **Q. And this stems from a national database that**
5 **records all the dig call-in requests for -- in the Call**
6 **Before You Dig program; is that correct?**

7 A. Yes.

8 **Q. And did you review this document and rely on**
9 **this document in the course of your investigation?**

10 A. Yes.

11 MR. SHEARER: I would move to admit that
12 document as Exhibit SA-4, your Honor.

13 JUDGE PEARSON: Okay. Mr. Rogers?

14 MR. ROGERS: My only concern here is, I
15 think this was the confusion with the 2800 and 2802.
16 Like I said, my secretary had handwritten on my notes
17 here 2802. I think that's the address you guys are
18 using. All of our documents, our permits, everything
19 for this site, including the owner-provided information,
20 is 2800. Either way, it's the same address.

21 JUDGE PEARSON: Okay. So you have no
22 objection then?

23 MR. ROGERS: No.

24 JUDGE PEARSON: Okay. Then I will admit
25 that and mark it as Exhibit SA-4.

1 (Exhibit No. SA-4 was marked and
2 admitted into evidence.)

3 JUDGE PEARSON: It looks like SA-5 is
4 identical to SA-4 in the copy that I have.

5 MR. SHEARER: The dates are different,
6 your Honor --

7 JUDGE PEARSON: Oh, okay.

8 MR. SHEARER: -- that recorded the call-in.

9 JUDGE PEARSON: I see. Okay.

10 MR. SHEARER: There was a second call-in.

11 BY MR. SHEARER:

12 **Q. I'm going to hand you a fifth document now,**
13 **Mr. Anderson.**

14 **Do you recognize this document?**

15 A. Yeah. This is the locate ticket for -- it's
16 September 22nd, 2015, which is when the damage occurred.

17 **Q. So this document indicates a second dig -- Call**
18 **Before You Dig request that was filed on the date**
19 **indicated in this document; is that correct?**

20 A. Yes.

21 **Q. And did you rely on this document and review**
22 **this document in the course of your investigation,**
23 **Mr. Anderson?**

24 A. Yes.

25 MR. SHEARER: Your Honor, I would move to

1 admit this document as Exhibit SA-5, please.

2 JUDGE PEARSON: Mr. Rogers, any objection?

3 MR. ROGERS: I'm confused. Are we referring
4 to the document that says original call-in date
5 June 19th?

6 MR. SHEARER: No.

7 JUDGE PEARSON: No. It's the next document
8 that says original call date 9/22.

9 MR. ROGERS: Did I miss -- did we include
10 the document previous to that that was June 19th?

11 JUDGE PEARSON: We did.

12 MR. ROGERS: Okay. Sorry. I missed that.
13 Yes, I'm okay with this.

14 JUDGE PEARSON: Okay. Then I will admit
15 that and mark it as Exhibit SA-5.

16 (Exhibit No. SA-5 was marked and
17 admitted into evidence.)

18 BY MR. SHEARER:

19 **Q. Now, I'll quickly recap your investigation,**
20 **Mr. Anderson.**

21 **On the first instance, the Lakewood instance as**
22 **we're referring to it, you relied on the dirt ticket**
23 **submitted by the utility, correct?**

24 **A. Yes.**

25 **Q. The -- a conversation with Ms. Schmidt from the**

1 **company here today; is that correct?**

2 A. Yes.

3 **Q. And you relied on the national database that**
4 **indicated the call-in records; is that correct?**

5 A. Yes.

6 **Q. Okay. And what -- and for the instance -- the**
7 **Tacoma instance -- well, I'll let you say. What**
8 **documents did you rely on and what information did you**
9 **rely on?**

10 A. The same -- same type of documents. The dirt
11 report, the National Ticket Management System website,
12 contact with the company.

13 **Q. Thank you. And what is your penalty**
14 **recommendation in this case, Mr. Anderson?**

15 A. The penalty was \$2,000.

16 **Q. And why?**

17 A. For -- we fined 1,000 for the first dig and
18 1,000 for the second, for a total of 2,000.

19 **Q. And what was -- why 2,000?**

20 A. That's --

21 **Q. Why 1,000 each time? Excuse me.**

22 A. That's what was established in our procedures
23 for violating the dig law.

24 **Q. For the first time?**

25 A. Yes.

1 MR. SHEARER: Thank you, Mr. Anderson. I
2 have no further questions.

3 JUDGE PEARSON: Okay. Mr. Rogers, did you
4 want to respond to Staff's recommendation?

5 MR. ROGERS: And regarding the Lakewood
6 site, the disruption that happened, it wasn't -- it
7 wasn't a negligent act, but it was a -- it happened. I
8 don't know if we would have located -- hopefully, if we
9 would have had locates, it would have made a difference.
10 I want to believe that that's the fix to it. We try not
11 to let that happen, but it wasn't a negligent act. We
12 weren't out there digging. It was not a clearing
13 project by any means. It was intended to have
14 excavation done.

15 On the second project, I -- I feel like we
16 were -- the site in Tacoma, the 2800 or 2802, it was the
17 only house on -- it was the only house on East R Street,
18 the only structure, period, on East R Street. It's a --
19 it's a two-block piece of property. The entire piece of
20 property is two square full blocks that we were working
21 on.

22 And this house was -- we did what we were
23 supposed to do. We did our locates in June, and it
24 turned up nothing on the site. And the -- the gas line
25 that they found was not affiliated with our house. It

1 was -- it was with something else that was on the
2 property, or it was just too close to the surface or
3 whatever. But I do remember Puget Sound Energy telling
4 us they had no information of this particular gas line.

5 JUDGE PEARSON: Okay. Thank you.

6 Anything else, Mr. Shearer?

7 MR. SHEARER: No, your Honor.

8 JUDGE PEARSON: Okay. Mr. Rogers, thank you
9 for taking the time to come here today, and you are free
10 to go.

11 MR. ROGERS: Okay.

12 JUDGE PEARSON: Okay. And before I call the
13 next docket, I just want to take a very brief recess, so
14 we will go off the record and be back at 10:20.

15 (A break was taken from

16 10:18 a.m. to 10:22 a.m.)

17 JUDGE PEARSON: Okay. Mr. Shearer, are you
18 ready?

19 MR. SHEARER: I am, your Honor.

20 JUDGE PEARSON: Okay. Then we will be back
21 on the record after a brief recess.

22 And the next docket is DG-160328,
23 Town & Country Tree Service.

24 If you could come forward, and if you could
25 please state your name, spelling your last name for the

1 court reporter.

2 MR. MOORE: Larry Moore, M-o-o-r-e.

3 JUDGE PEARSON: Okay. And your address,
4 please?

5 MR. MOORE: It's 85147 Highway 11,
6 P.O. Box 168, Milton-Freewater, Oregon.

7 JUDGE PEARSON: Okay. And your phone number
8 and e-mail address?

9 MR. MOORE: (509) 525-3231. And e-mail is
10 tredoc@hotmail.com.

11 JUDGE PEARSON: Okay. Can you tell me your
12 first name again?

13 MR. MOORE: Larry.

14 JUDGE PEARSON: Larry. Okay. Larry Moore.
15 And what position do you hold with the company?

16 MR. MOORE: I'm the owner.

17 JUDGE PEARSON: Okay. Okay. And if you
18 could stand and raise your right hand, I will swear you
19 in.

20

21 LARRY MOORE, witness herein, having been
22 first duly sworn on oath,
23 was examined and testified
24 as follows:

25 / / /

DIRECT TESTIMONY BY MR. MOORE

40

1 JUDGE PEARSON: Okay. Go ahead and be
2 seated, and you can proceed whenever you're ready.

3 *** DIRECT TESTIMONY BY MR. MOORE ***

4 MR. MOORE: Okay. First, I got notice of
5 this hearing last Monday, and they requested documents,
6 I don't know, by Tuesday, which was impossible for me to
7 get them to them by that time.

8 But I have pictures --

9 JUDGE PEARSON: Okay.

10 MR. MOORE: -- of the site that I would like
11 to present.

12 JUDGE PEARSON: Sure. Mr. Shearer, did you
13 want to take a look at those before I do and let me know
14 if you have any objections?

15 MR. SHEARER: I will look at them, but it's
16 going to be hard for me to have much of an opinion.

17 JUDGE PEARSON: Mr. Moore, do you want to
18 take a seat and explain to Mr. Shearer what he's looking
19 at? Into the microphone, please, Mr. Moore.

20 MR. SHEARER: They just look like pictures
21 of grass to me.

22 MR. MOORE: It's pictures of the site where
23 the tree was -- the picture of the tree that was
24 removed --

25 JUDGE PEARSON: Okay.

DIRECT TESTIMONY BY MR. MOORE

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1 MR. MOORE: -- and what was done there.

2 JUDGE PEARSON: Okay. Mr. Shearer, do you
3 have any objection to me taking a look at those?

4 MR. SHEARER: No, I have objection to you
5 looking at them. I might have our expert look at them,
6 too, when he comes up for his testimony.

7 JUDGE PEARSON: Sure. That sounds good.
8 Okay. So these look like photos -- is this Whitman
9 College; is that --

10 MR. MOORE: That's correct.

11 JUDGE PEARSON: -- where the incident
12 occurred?

13 MR. MOORE: That's correct.

14 JUDGE PEARSON: And this is the tree?

15 MR. MOORE: No. The other picture with the
16 large tree in it.

17 JUDGE PEARSON: This one?

18 MR. MOORE: That one.

19 JUDGE PEARSON: Okay.

20 MR. MOORE: Yeah. I don't know if they got
21 out of order, but Whitman College contacted me to remove
22 that tree, the purpose to -- in removing the tree was so
23 they could excavate that yard down.

24 If -- you'll notice in that other color
25 picture there that there is a retaining wall alongside

DIRECT TESTIMONY BY MR. MOORE

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1 the sidewalk, and there's a step-up at the sidewalk that
2 goes into the house.

3 JUDGE PEARSON: Yes, I can see that.

4 MR. MOORE: Okay. Well, I think that,
5 according to the report, that they're being
6 disingenuous, because they said that it was outside of
7 the excavation area. The whole point of them doing this
8 excavation was to take that wall out of there and
9 excavate that yard down. That's the reason they took
10 the tree out so -- was so they could excavate the yard
11 down.

12 JUDGE PEARSON: So I have a question. Are
13 these before and after pictures?

14 MR. MOORE: They are.

15 JUDGE PEARSON: Okay.

16 MR. MOORE: They are.

17 JUDGE PEARSON: So this is a picture before
18 the work was done?

19 MR. MOORE: That's correct.

20 JUDGE PEARSON: And this is a picture after?

21 MR. MOORE: A picture after the work.

22 JUDGE PEARSON: So they changed the front of
23 the building?

24 MR. MOORE: The front of the building is the
25 same; they just lowered the grade.

DIRECT TESTIMONY BY MR. MOORE

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1 JUDGE PEARSON: Okay. The sidewalk looks
2 different, though.

3 MR. MOORE: Well, they poured a new
4 sidewalk.

5 JUDGE PEARSON: Gotcha. Okay. And so the
6 tree would have been farther out here in front?

7 MR. MOORE: Correct.

8 JUDGE PEARSON: Okay.

9 MR. MOORE: Correct. So in the next
10 picture, there's another color picture there that shows
11 the front of the building and it shows the -- no, it
12 shows the street, and it will show where the gas line is
13 marked on the street.

14 JUDGE PEARSON: This one right here with the
15 yellow mark?

16 MR. MOORE: With the yellow mark, yes.

17 JUDGE PEARSON: Okay.

18 MR. MOORE: So that yellow mark went right
19 down to the corner and turned the corner and went down
20 the following -- the other -- the side street --

21 JUDGE PEARSON: Okay.

22 MR. MOORE: -- down Park Street. But there
23 was no -- no mark at all that went into that yard.

24 Now, they maintained that the tree was
25 outside of their locate area, and yet all of that

DIRECT TESTIMONY BY MR. MOORE

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1 sidewalk was to be excavated, that wall was to be
2 excavated, the yard was to be excavate.

3 JUDGE PEARSON: So when you say "they," who
4 do you mean?

5 MR. MOORE: The gas company.

6 JUDGE PEARSON: So the gas company what was?

7 MR. MOORE: Cascade Natural Gas.

8 JUDGE PEARSON: Cascade said that there were
9 no gas lines in the yard?

10 MR. MOORE: They did not mark any gas lines
11 in the yard.

12 JUDGE PEARSON: Okay. Go ahead.

13 MR. MOORE: When I -- I went -- I was
14 supposed to take the tree out. I wasn't supposed to
15 take the stump out. Whitman was going to take the stump
16 out, and they were going to dig it out, and they are the
17 ones that called for the locate.

18 So when I went, it was on the 2nd of July,
19 they were trying to get this thing done because they had
20 the sidewalk, they were excavating that. That gas line
21 crossed the sidewalk, crossed that wall, and went up in
22 the yard.

23 And you probably don't know, but the
24 testimony in the previous case is very correct, is that
25 gas lines, you do not know at what grade they are. If

DIRECT TESTIMONY BY MR. MOORE

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1 you're talking about a power line, you know that it's at
2 three feet deep, and a water line is going to be two
3 feet deep. A gas line can be on the surface or it can
4 be two feet deep; you just never know where it's going
5 to be.

6 And so for them to say that they didn't mark
7 that because -- or that they would have found it if
8 they'd known there was a stump there, well, they knew
9 they were excavating that wall. They knew they were
10 excavating that sidewalk. That gas line could have been
11 right there, and, in fact, it wasn't very deep.

12 JUDGE PEARSON: Okay.

13 MR. MOORE: Okay. I understand that this
14 doesn't change the fact that we didn't call for a
15 locate. I'm just giving you the reasoning that we went
16 by, because I knew that Scott had just gotten a locate
17 for that excavation there.

18 JUDGE PEARSON: Who is that?

19 MR. MOORE: Scott is the guy from Whitman
20 College.

21 JUDGE PEARSON: Okay.

22 MR. MOORE: And I had talked to him that
23 day, and he said, I already got a locate and there's
24 nothing there. All of the gas lines come in from the
25 alley behind that building. And, in fact, all of the

DIRECT TESTIMONY BY MR. MOORE

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1 other buildings on that block are fed from the alley,
2 but that one was not.

3 JUDGE PEARSON: Okay.

4 MR. MOORE: So I think that it's -- that
5 they're trying to shape their end of the story. I don't
6 know what action happened with the gas company over
7 this. I know they didn't charge me for the repair. And
8 if, in fact, they had marked it even to the sidewalk,
9 then we wouldn't have been in there grinding that stump.

10 There's -- I noticed another thing in the
11 report here, it said that the building was evacuated.
12 Well, that building is an interest house, or for lack of
13 a -- they use it for students during the school year,
14 but the students were all gone. And they had a group of
15 five or six people that were on campus for a seminar
16 that were staying in that building, but they weren't in
17 the building at that time. They were off at a class or
18 a seminar, whatever it was.

19 So I don't know what their definition of an
20 evacuation is. Does that mean that they wouldn't let
21 them back in until they fixed the pipe? I don't know,
22 but they weren't in the building.

23 JUDGE PEARSON: Okay. So what you're saying
24 is you went in there to cut the tree down, you weren't
25 intending to remove the stump, but then you ended up

DIRECT TESTIMONY BY MR. MOORE

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1 removing the stump and that's when this happened?

2 MR. MOORE: That's when it happened.

3 JUDGE PEARSON: Okay.

4 MR. MOORE: And when I called -- I wasn't
5 on-site. I had left and my -- my worker went and got
6 the stump grinder and came back to grind the stump. And
7 because it was late in the evening, it was 6:30 or 7:00,
8 that -- because they were going to work on that the next
9 day, and then he called me and said, hey, I think I hit
10 a gas line.

11 And so I immediately called Scott from
12 Whitman College, and I said, hey, Manual says he hit a
13 gas line up there, and he says, no, no, he didn't. I
14 don't know what he hit, but he didn't hit a gas line,
15 because the gas people told me they all come in from the
16 alley in the back. There's nothing out there.

17 JUDGE PEARSON: Okay.

18 MR. MOORE: One of the other things I
19 noticed is that the staff said that there was a high
20 likelihood that this would happen again. Well, I've
21 been there for 37 years, and this hasn't happened. So I
22 don't know what -- where -- how you determine what a
23 high likelihood is. If it happened once, well, then it
24 must surely gonna be happening again. And it might
25 happen again in another 37 years, I don't know.

DIRECT TESTIMONY BY MR. MOORE

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1 But they said in their report that since
2 that time that we had done another excavation without a
3 locate. Well, that's half of story. In fact, we did
4 have a locate called in for the other site. And I met
5 with the gas person who investigated this one -- I can't
6 tell you his name, but he was the same person that came
7 and investigated this site on Main Street.

8 I met with him there, and he came and
9 located the gas line that was down in the street. And
10 he said there was a six-inch line that was in the
11 street, but there were no laterals that went off of
12 that. They were nowhere near what we were going to --
13 where we were going to grind stumps.

14 And then the next day, the locate person
15 called me and said, you guys ground these stumps, and I
16 hadn't located it yet. And I said, well, your other man
17 was there and he told me exactly where that line was.
18 So --

19 JUDGE PEARSON: Okay. Is there anything
20 else that you want to add?

21 MR. MOORE: I think that's -- I don't know
22 how they determined what \$1,000 fine is, but, you know,
23 \$1,000 is a lot of money to me. And it's just -- well,
24 just chalk one more up. I don't know.

25 But I've been in business a long time, and

CROSS-EXAMINATION BY MR. SHEARER / MOORE

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1 it's a little bit of a burn to me to have them say it's
2 a high likelihood that this will happen again. That's
3 ludicrous in my opinion.

4 JUDGE PEARSON: Okay. Thank you.

5 Mr. Shearer, do you have any questions for
6 Mr. Moore?

7 MR. SHEARER: Just a couple brief questions,
8 your Honor.

9 *** CROSS-EXAMINATION BY MR. SHEARER ***

10 BY MR. SHEARER:

11 Q. Those pictures that you handed up to the -- to
12 Judge Pearson there, what was the address of that
13 building?

14 A. I have no idea.

15 Q. No idea. Next, was there -- were you present
16 when Whitman asked for a locate from Cascade Natural
17 Gas?

18 A. No.

19 Q. Were you present when Cascade came and did the
20 locate for Whitman or talked to this gentleman Scott you
21 referred to?

22 A. No.

23 Q. So all your information just came through your
24 recollection of conversations with the representative
25 from Whitman College; is that correct?

CROSS-EXAMINATION BY MR. SHEARER / MOORE

1 A. All of my information?

2 Q. All of your information about the locate came
3 through --

4 A. Oh --

5 Q. -- the gentleman from Whitman College?

6 A. -- no.

7 Q. What was the other source?

8 A. Because the gas guy showed up the night of the
9 incident and they told me that they didn't locate it.

10 Q. Cascade arrived --

11 A. Told me --

12 Q. -- after the gas line --

13 A. Told me they failed to mark it, yes.

14 Q. They told you that?

15 A. Yes.

16 MR. SHEARER: Thank you. I have no further
17 questions.

18 JUDGE PEARSON: Okay. And did you want to
19 call your witness?

20 MR. SHEARER: Yes, your Honor. Our
21 investigator, Mr. Derek Norwood.

22 JUDGE PEARSON: Okay. If you could raise
23 your right hand.

24 / / /

25 / / /

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1 DEREK NORWOOD, witness herein, having been
2 first duly sworn on oath,
3 was examined and testified
4 as follows:

5
6 JUDGE PEARSON: Go ahead, Mr. Shearer.

7 *** DIRECT EXAMINATION BY MR. SHEARER ***

8 BY MR. SHEARER:

9 Q. Mr. Norwood, could you state your name and spell
10 your name last name for the record?

11 A. Derek Norwood, N-O-R-W-O-O-D.

12 Q. And what is your position here at the UTC,
13 Mr. Norwood?

14 A. I'm a pipeline safety engineer.

15 Q. And what was your role in this docket, Docket
16 DG-160328?

17 A. I was the assigned investigator to this -- to
18 this incident, so I reviewed reports from Cascade, as
19 well as had a phone conversation with Larry Moore to, I
20 guess, collect the facts, collect information regarding
21 the incident.

22 Q. And can you summarize your investigations and
23 findings in the course of that investigation?

24 A. Yeah. So I reviewed dirt reports submitted by
25 Cascade Natural Gas stating that Town & Country had

DIRECT EXAMINATION BY MR. SHEARER / NORWOOD 52

1 damaged the gas line, as well as their -- they submit a
2 30-day report to the Commission. And I talked with
3 Larry Moore regarding the incident, and a lot of the
4 information that he's given today was similar
5 conversation that we had on the phone.

6 I've also talked with Cascade, and through that
7 conversation determined that the locates were not for --
8 that tree didn't -- wasn't included in the locate
9 boundary, nor was stump grinding part of the work that
10 was to be done.

11 **Q. So to recap, you relied on the dirt ticket**
12 **submitted from the company, the incident hazardous**
13 **condition report filed by Cascade Natural Gas; is that**
14 **correct?**

15 A. Yes. Yeah. We call it a 30-day report. They
16 might have another name for it, but yeah.

17 **Q. And the conversations with Mr. Moore and with**
18 **the utility?**

19 A. Yes.

20 **Q. And Mr. Moore indicated to you that they had, in**
21 **fact, excavated by removing the ticket -- or removing**
22 **the stump -- excuse me -- is that correct?**

23 A. Correct, yes.

24 **Q. And Mr. Moore's company itself had not called in**
25 **for a locate?**

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1 A. Correct.

2 MR. SHEARER: Thank you, Mr. Norwood.

3 And I'll go through and authenticate the
4 proposed exhibits, your Honor.

5 JUDGE PEARSON: Okay.

6 MR. SHEARER: So very similar routine as the
7 previous two.

8 BY MR. SHEARER:

9 **Q. Mr. Norwood, do you recognize this document?**

10 A. Yes.

11 **Q. And what is that document?**

12 A. That's our internal investigation form
13 summarizing my findings and the process of the
14 investigation.

15 **Q. And this document accurately reflects your
16 investigation and findings in this docket?**

17 A. Yes.

18 MR. SHEARER: I would move to admit that as
19 Exhibit DN-1, your Honor.

20 JUDGE PEARSON: Okay. Mr. Moore, do you
21 have any objection to admitting this?

22 MR. MOORE: No.

23 JUDGE PEARSON: Okay. I will admit it and
24 mark it as Exhibit DN-1.

25 / / /

DIRECT EXAMINATION BY MR. SHEARER / NORWOOD

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1 (Exhibit No. DN-1 was marked and
2 admitted into evidence.)

3 BY MR. SHEARER:

4 Q. And then a second document I'm going to hand
5 you, Mr. Norwood.

6 Do you recognize that document?

7 A. Yes.

8 Q. And what is that document?

9 A. This is the damage report, the dirt report
10 submitted by Cascade Natural Gas indicating that there
11 was damage to their gas line, and it notes that
12 Town & Country was the responsible party.

13 Q. And did you review and rely on this document in
14 the course of your investigation?

15 A. Yes.

16 MR. SHEARER: Your Honor, I would move to
17 admit that as Exhibit DN-3 -- or DN-2. Excuse me.

18 JUDGE PEARSON: Okay. Mr. Moore, do you
19 have any objection to that exhibit?

20 MR. MOORE: No. I guess I would -- I think
21 I'm looking at the same thing.

22 JUDGE PEARSON: Yes.

23 MR. MOORE: Yeah. I just noticed that down
24 in Part F it said, "Facility marks visible in the area
25 of excavation by the utility," and it says, "No,"

DIRECT EXAMINATION BY MR. SHEARER / NORWOOD 55

1 indicating that they didn't mark it.

2 JUDGE PEARSON: Is that what that indicates,
3 or does it indicate that the locate was not called in?

4 THE WITNESS: I think it indicates there
5 were no -- there were no marks visible, so that could
6 mean that there were no locates or it could mean --

7 JUDGE PEARSON: Oh, okay.

8 THE WITNESS: -- the paint had worn off, or
9 it could be a number of things. So they got out there,
10 they didn't see locates on the ground.

11 JUDGE PEARSON: Okay.

12 BY MR. SHEARER:

13 Q. I'm going to hand you a third document now,
14 Mr. Norwood.

15 JUDGE PEARSON: Hold on. Are you okay with
16 that document?

17 MR. MOORE: Yeah. Yes.

18 JUDGE PEARSON: Then I will admit that and
19 mark at as Exhibit DN-2.

20 (Exhibit No. DN-2 was marked and
21 admitted into evidence.)

22 BY MR. SHEARER:

23 Q. Now I'm going to hand you a third document,
24 Mr. Norwood.

25 Do you recognize this document?

DIRECT EXAMINATION BY MR. SHEARER / NORWOOD 56

1 A. Yes. This is the document that Cascade Natural
2 Gas is required to send to us for incidents of this
3 type.

4 **Q. And what does this document show?**

5 A. It shows that there was damage to their
6 pipeline, and it lists Town & Country Tree Service as
7 the party responsible.

8 **Q. And did you rely on and review this document in**
9 **the course of your investigation?**

10 A. Yes.

11 MR. SHEARER: I would move to admit that as
12 Exhibit DN-3, your Honor.

13 JUDGE PEARSON: Okay. And Mr. Moore, do you
14 have any objection?

15 MR. MOORE: No, I don't.

16 JUDGE PEARSON: Then I will admit that as
17 Exhibit DN-3.

18 (Exhibit No. DN-3 was marked and
19 admitted into evidence.)

20 BY MR. SHEARER:

21 **Q. And I will hand you one more document,**
22 **Mr. Norwood.**

23 **Do you recognize this document?**

24 A. Yes. This is the dig ticket which was called in
25 by Whitman College.

DIRECT EXAMINATION BY MR. SHEARER / NORWOOD 57

1 Q. And that indicates that Whitman College was, in
2 fact, the party that requested the locate; is that
3 correct?

4 A. Yes.

5 Q. And did you rely on this document in the course
6 of your investigation?

7 A. Yes.

8 MR. SHEARER: Your Honor, I would move to
9 admit that as Exhibit DN-4.

10 JUDGE PEARSON: Okay. Mr. Moore?

11 MR. MOORE: No, no objection.

12 JUDGE PEARSON: Okay. I will admit that and
13 mark it as Exhibit DN-4.

14 (Exhibit No. DN-4 was marked and
15 admitted into evidence.)

16 BY MR. SHEARER:

17 Q. And I want to touch base on one item Mr. Moore
18 mentioned in direct or cross-examination.

19 A. Um-hmm.

20 Q. And that is that Cascade indicated to him that
21 it had been their mistake not to mark this location.

22 Was that your -- did Cascade indicate anything
23 of that sort to you, or do any of the documents you
24 reviewed indicate that conclusion?

25 A. None of the documents I reviewed indicated that.

DIRECT EXAMINATION BY MR. SHEARER / NORWOOD 58

1 Larry Moore had told me the same thing over the phone,
2 so I brought that issue up to Cascade Natural Gas, and
3 they, from their -- from that conversation, they said
4 that was never the case, that he knew the line was
5 there, but they didn't locate it because of the
6 boundary. The locates had a wide boundary where lines
7 need to be located, and this locate ticket didn't have
8 this tree stump included in that.

9 **Q. And did Cascade provide you with any further**
10 **evidence of their position?**

11 A. Yes. I have pictures showing boundaries from
12 Cascade showing the white paint on the ground where the
13 locates were requested, so I don't know if we need to --
14 I mean, I can show or --

15 **Q. Well, we'll leave that to Judge Pearson if she**
16 **decides she'd like to see that, but you can provide that**
17 **on request, if necessary, Mr. Norwood; is that correct?**

18 A. Yeah, I have that available.

19 **Q. Okay. Lastly, I want to go into the issue of**
20 **the penalty.**

21 **What was your recommended penalty in this case?**

22 A. The recommended penalty was \$1,000.

23 **Q. And why did you recommend that amount,**
24 **Mr. Norwood?**

25 A. The maximum penalty is \$10,000, so we felt that

DIRECT EXAMINATION BY MR. SHEARER / NORWOOD 59

1 for first-time violators that \$1,000 was a pretty
2 reasonable amount. And for a majority of excavators, it
3 is a pretty minimal penalty in these cases.

4 **Q. A balance of the need to have a penalty versus**
5 **being overly punitive; is that --**

6 A. Correct.

7 **Q. -- an accurate summary?**

8 A. Yes.

9 MR. SHEARER: Thank you. I have no further
10 questions for Mr. Norwood, your Honor.

11 JUDGE PEARSON: Okay. I do think it would
12 be helpful for me to see the photos of the boundaries,
13 because when I read Exhibit DN-4, where it talks about
14 the location of the work, it describes the areas marked
15 in white in front of the multiple addresses, and says,
16 locating from the street to the water meters in front of
17 these addresses, but I have no way of knowing where the
18 water meters are on the property.

19 THE WITNESS: Yeah. I don't specifically --
20 I don't know where the water meters are specifically,
21 and I don't think you're going to get that from the
22 pictures. But yeah, I can show you what I've got.

23 MR. SHEARER: I can hand them up if you
24 want.

25 THE WITNESS: Yeah. Or if we want to -- if

DIRECT EXAMINATION BY MR. SHEARER / NORWOOD 60

1 we need to include all of them, we can, but these are
2 the two I thought the most relevant.

3 MR. SHEARER: Your Honor, I would ask -- if
4 you want me, I am happy to take a short recess and make
5 copies and Mr. Norwood can walk through what -- so
6 everyone's looking at the same thing, or we can just
7 hand them up to you now.

8 JUDGE PEARSON: I'd just like to glance at
9 them, and of course Mr. Moore can have an opportunity to
10 look at them, too. And I am going to consider these
11 photos as well as the ones that Mr. Moore provided just
12 for illustrative purposes without making them part of
13 the record.

14 MR. MOORE: So there should be a yellow mark
15 that crosses that sidewalk.

16 JUDGE PEARSON: That's not visible in these
17 photos?

18 MR. MOORE: There is no yellow mark.

19 JUDGE PEARSON: Okay.

20 MR. MOORE: They did not locate it.

21 JUDGE PEARSON: I'll hand these back.

22 MR. SHEARER: Did you need any other
23 explanation?

24 JUDGE PEARSON: Well, I can see where the
25 stump is on the photo and it --

DIRECT EXAMINATION BY MR. SHEARER / NORWOOD 61

1 THE WITNESS: In one of the pictures, you
2 can see there's white marks. That's the boundary where
3 the locates are.

4 JUDGE PEARSON: And it's behind the fire
5 hydrant?

6 THE WITNESS: Yes.

7 JUDGE PEARSON: Okay.

8 THE WITNESS: And then -- well, you can kind
9 of cross-reference with, I think, the back page there,
10 you can see right along the retaining wall, there's a
11 locate that heads down the street. Like he said,
12 there's no yellow paint, so I don't know if it's outside
13 that boundary or if it's inside, so --

14 JUDGE PEARSON: But there was a yellow mark
15 in his photo.

16 THE WITNESS: Okay. I haven't seen that.

17 JUDGE PEARSON: Did you want to take a look
18 at these?

19 THE WITNESS: Yeah.

20 JUDGE PEARSON: So the white mark represents
21 the area and the boundary that Whitman was requesting
22 locates performed --

23 THE WITNESS: Yes.

24 JUDGE PEARSON: -- for that area?

25 THE WITNESS: Correct.

DIRECT EXAMINATION BY MR. SHEARER / NORWOOD 62

1 JUDGE PEARSON: They don't actually indicate
2 the locates themselves?

3 THE WITNESS: No. It indicates the boundary
4 where they're going to be working and where they want
5 utilities located.

6 JUDGE PEARSON: Okay.

7 THE WITNESS: So there's -- there's a yellow
8 line in the street, but there's no locate showing where
9 the service line goes over to the building. And so I
10 guess, from any of these pictures, we're not able to
11 tell where the service line turns off, and whether it
12 was in that locate boundary or whether it wasn't.

13 JUDGE PEARSON: Okay.

14 MR. MOORE: There was no mark for the
15 service line.

16 THE WITNESS: Yeah. I mean, that's what I'm
17 saying. We don't know that it was -- whether it was in
18 the boundary or whether it was out. I mean, it may have
19 been out, so that's why --

20 MR. MOORE: Or the service -- where the
21 service line went?

22 THE WITNESS: Correct, whether it --

23 MR. MOORE: It was in --

24 JUDGE PEARSON: Okay. One at a time.

25 MR. MOORE: I said the service line was

DIRECT EXAMINATION BY MR. SHEARER / NORWOOD 63

1 within the boundary of the locate, because the locate
2 covered all of these addresses all the way down the
3 street clear up to that corner.

4 JUDGE PEARSON: Right. That's what it looks
5 like from the description.

6 MR. MOORE: And that service line -- well,
7 you can see from where the tree is in relationship to
8 the sidewalk on the side, you know, it's over about five
9 or six feet in the yard, and that's where that service
10 line crossed this sidewalk and went right up that yard
11 underneath the tree to behind the house.

12 JUDGE PEARSON: Okay.

13 MR. MOORE: The gas meter, if you look at
14 that one -- the one picture, you'll see they have a walk
15 that comes out -- it's -- it comes out and goes down,
16 and the gas line goes underneath that walk and comes to
17 the meter behind.

18 JUDGE PEARSON: Okay. Mr. Norwood, do you
19 have anything further to add?

20 THE WITNESS: No.

21 JUDGE PEARSON: Okay.

22 THE WITNESS: No.

23 JUDGE PEARSON: And Mr. Moore, did you want
24 to respond to Staff's recommendation?

25 MR. MOORE: Well, I don't know if there's a

1 purpose to that or if it's just to create pain. I'm not
2 sure.

3 JUDGE PEARSON: Okay.

4 MR. MOORE: I think our record speaks for
5 itself. We're very careful about those things.

6 JUDGE PEARSON: Mr. Shearer, do you have
7 anything further this morning?

8 MR. SHEARER: No, your Honor, I don't have
9 anything. I think you have a very good grasp of all the
10 facts now, and we'll go from there.

11 JUDGE PEARSON: Okay. Thank you, Mr. Moore,
12 for taking time to come here today --

13 MR. MOORE: Thank you.

14 JUDGE PEARSON: -- and you are free to go.
15 And we will be off the record. Thank you.

16 (Hearing concluded at 10:53 a.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
 COUNTY OF KING)

I, ANITA W. SELF, a Certified Shorthand Reporter
 in and for the State of Washington, do hereby certify
 that the foregoing transcript is true and accurate to
 the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand
 and seal this 5th day of July, 2016.

ANITA W. SELF, RPR, CCR #3032