

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

SETTLEMENT STIPULATION AND  
AGREEMENT

1           This settlement stipulation and agreement (the “Agreement”) is entered into by both parties to this proceeding for the purpose of resolving all issues raised in the above docket. The Agreement is a “full settlement” as defined in WAC 480-07-730(1) because it is entered into by all parties and resolves all issues raised in the docket.

2           This Agreement is subject to the review and disposition by the Washington Utilities and Transportation Commission (“Commission”) to determine whether it complies with the applicable legal requirements and whether approval of the Agreement is consistent with the public interest. WAC 480-07-740–750.

**I. PARTIES**

3           The parties to this Agreement are Evergreen Concrete Cutting, Inc. (“Evergreen” or “Company”), and Staff of the Washington Utilities and Transportation Commission (“Commission Staff”) (collectively, “the Parties”).

**II. BACKGROUND**

4           Evergreen is a concrete cutting company whose sawcutting activities that fall within the definition of an excavation, as defined in RCW 19.122.020(8), are subject to the Underground Utility Damage Prevention Act, codified as chapter 19.122 RCW. The Commission administers and enforces the Act.

5 Pursuant to the Act, before an excavator commences any excavation, it must mark the boundary of the excavation area with white paint and provide notice of the planned excavation to a one-number locator service within two to ten business days before the scheduled date for the commencement of the excavation. RCW 19.122.030.

6 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 penalties were 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, and failed to 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, and failed to 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, and failed to 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, and failed to 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.

7 On December 21, 2018, Evergreen filed a request for a hearing to contest the two alleged violations occurring on June 14, 2018, and the one alleged violation occurring on July 6, 2018. Evergreen admitted to the alleged violation that occurred on March 26, 2017.

8 On January 9, 2018, the Commission issued a Notice of Brief Adjudicative Proceeding. This notice scheduled a hearing for April 18, 2019, and set a deadline of April 11, 2019, to file any documents for consideration.

9 On January 16, 2019, the Commission issued a Notice Rescheduling Brief Adjudicative Proceeding, upon request of the Parties. This notice rescheduled the hearing

for April 15, 2019, and set a deadline of April 8, 2019, to file any documents for consideration.

10           On January 30, 2019, the Parties attended a settlement conference to resolve the disputed issued in this docket number.

11           On February 19, 2019, the Parties agreed to the terms of the Agreement.

### **III. AGREEMENT**

12           The Parties have reached an agreement on the issues raised in the above docket and present this Agreement for the Commission's consideration and approval. The Parties therefore adopt the following Agreement, which the Parties enter into voluntarily, to resolve the matters in dispute between them and to expedite the orderly disposition of this proceeding.

13           Evergreen admits to the following violations:

- The violation that occurred on March 26, 2017;
- The first violation that occurred on June 14, 2018; and
- The violation that occurred on July 6, 2018.

14           The Parties stipulate that Evergreen did not commit the second alleged violation that occurred on June 14, 2018, at 23436 28th Avenue South, Des Moines, Washington. The Parties stipulate to this in light of evidence provided to Commission Staff (Staff) by Evergreen, and to aid in the orderly settlement of this proceeding.

15           The Parties agree that Evergreen will pay a penalty of \$6,000 for three violations of RCW 19.122.030(2). The Parties further agree that Evergreen will pay the Commission \$2,000 of the \$6,000 penalty the day after the Commission enters an order approving this Agreement. The Parties further agree that the remaining \$4,000 of the penalty will be

suspended upon the condition that Evergreen commit no further violations of chapter 19.122 RCW within 12 months from the date this settlement agreement is approved.

16 Staff confirms that it will not pursue further enforcement against Evergreen arising out of any of the allegations set forth in the penalty assessment.

17 The Parties agree that Evergreen, by entering into this Agreement, 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.

18 Evergreen commits to comply with chapter 19.122 RCW going forward.

#### **IV. GENERAL PROVISIONS**

19 The Parties agree that this Agreement is in the public interest. The Parties further agree that this Agreement constitutes a settlement of all contested issues between them in this proceeding. The Parties understand that this Agreement is not binding unless and until accepted by the Commission. If the Commission does not accept this Agreement, including all of its terms and conditions without change, then the Parties shall be free to assert their pre-settlement positions.

20 The Parties agree to cooperate in submitting this Agreement promptly to the Commission for acceptance. The Parties agree to support adoption of this Agreement in proceedings before the Commission. No party to this Agreement or its agents, employees, consultants, or attorneys will engage in advocacy contrary to the Commission's adoption of this Agreement.

21 The Parties agree (1) to provide each other the right to review in advance of publication any and all announcements or news releases that the other party intends to make about the Agreement (with the right of review to include a reasonable opportunity to request

changes to the text of such announcements) and (2) to include in any news release or announcement a statement that the Staff's recommendation to approve the settlement is not binding on the Commission itself.

22           Nothing in this Agreement shall limit or bar any other entity from pursuing legal remedies against Evergreen or Evergreen's ability to assert defenses to such claims.

23           The Parties have entered into this Agreement to avoid further expense, inconvenience, uncertainty, and delay. The Parties recognize that this Agreement represents a compromise of the Parties' positions. As such, conduct, statements, and documents disclosed during negotiations of this Agreement shall not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Agreement or any Commission order fully adopting those terms. This Agreement shall not be construed against either party because it was a drafter of this Agreement.

24           By executing this Agreement, no Party shall be deemed to have approved, admitted, or consented to the facts, legal principles, methods, or legal theories employed in arriving at the terms of this Agreement, nor shall this Agreement be used by any Party, or otherwise be binding on the Parties hereto, for resolving issues in any other proceeding, except to the extent expressly set forth in the Agreement.

25           The Parties have negotiated this Agreement as an integrated document to be effective upon execution. This Agreement supersedes all prior oral and written agreements on issues addressed herein. Accordingly, the Parties recommend that the Commission adopt this Agreement in its entirety.

26           The Parties may execute this Agreement in counterparts and as executed shall  
constitute one agreement. A signed signature page sent by facsimile or email is as effective  
as an original document.


27           The Parties shall take all actions necessary as appropriate to carry out this  
Agreement.

28           In the event that the Commission rejects all or any portion of this Agreement, or  
accepts the settlement upon conditions not proposed in this Agreement, each party reserves  
the right to withdraw from this Agreement by written notice to the other party and the  
Commission. Written notice must be served within 10 business days of the Order rejecting  
part or all of this Agreement or imposing conditions not proposed in this Agreement. In such  
event, neither party will be bound or prejudiced by the terms of this Agreement, and the  
Parties agree to request the prompt reconvening of a prehearing conference and to cooperate  
in developing a procedural schedule.

Respectfully submitted this 19<sup>th</sup> day of February 2019.

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

ROBERT W. FERGUSON  
Attorney General

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

Dated: February 26, 2019

EVERGREEN CONCRETE CUTTING, INC.

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Matt Taylor  
Title: President

Dated: February 19, 2019

Approved as to form:

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

Dated: February 19, 2019

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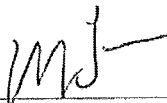
WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

ROBERT W. FERGUSON  
Attorney General

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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:

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

Dated: February 19, 2019