

November 8, 2006

Sally Johnston  
Senior Assistant Attorney General  
Attorney General's Office  
PO Box 40128  
Olympia, Washington 98504-0128

Dear Ms. Johnston:

**Subject: Letter Requesting Enforcement Action** (Docket PG-061606)

The Washington Utilities and Transportation Commission formally requests that the Attorney General's Office institute enforcement action against Talerico Construction Inc. of Puyallup, Washington, for violation of the Underground Utilities law, Chapter 19.122 RCW.

At the request of the Pipeline Safety Staff of the WUTC, Puget Sound Energy (PSE) has provided staff with underground facility damage data for purposes of identifying repeat violators of the dig law whose actions cause significant damage and risk to public safety.

PSE has provided documentation of 12 separate incidents between October of 2004 and May of 2006 in which Talerico caused damage to PSE's underground electric and natural gas pipeline facilities. Seven of those incidents resulted in gas escaping into the atmosphere. All incidents posed a safety hazard. It appears from this information that Talerico has repeatedly violated Chapter 19.122 RCW. This law requires excavators to:

- Request locates of underground facilities in the dig area, 19.122.030 (1);
- Wait two business days before digging, and dig within 10 days, 19.122.030 (3);
- Notify the underground facility owner when they have contacted or damaged a pipe, 19.122.050 (1).

It appears Talerico is in violation of at least one of the above-mentioned sections of Chapter 19.122 RCW for each instance where it damaged PSE's facilities.

The documentation provided by PSE illustrates its attempts to bring Talerico into compliance with Chapter 19.122 RCW though that remains Talerico's obligation. This information includes two letters from PSE dated January 27, 2006, and January 21, 2005 to Talerico identifying the applicable sections of the dig law, the specific dates when alleged violations occurred and the

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potential for the excavator to be subject to state penalties. The letters also included information on how the construction company and its crews could receive free training on to comply with the law. In each incident , PSE billed Talerico and in most instances for treble damages. Talerico has paid most of the bills without dispute.

The commission recommends that the Attorney General's Office consider filing a complaint and summons against Talerico seeking a maximum penalty in the amount of \$100,000 in accordance with Chapter 19.122 RCW.055 (1). The statute provides for a civil penalty in the amount of \$10,000 per violation. The fact that Talerico continues its violation of Chapter 19.122 RCW and willingly pays the bill for repairs plus treble damages when damage occurs, illustrates the need for enforcement action to achieve compliance with the law.

In the event of any settlement, the commission recommends that the Attorney General include in the settlement order a requirement that Talerico establish a formal written training program and manual to educate its employees on the provisions of Chapter 19.122 RCW. The program should include but not be limited to the following:

- All key elements of the Underground Utilities Law (Chapter 19.122 RCW);
- Use of the one-call number for locates;
- Use of reasonable care – including planning excavations around existing underground facilities;
- Annual dig law refresher course for excavation employees; and
- Procedures for conducting post-accident/damage investigations to determine how accidents/damage could have been prevented and the revision of company procedures accordingly.

The contact person for PSE is Jim Hogan at (425) 462-3957. Mr. Hogan and PSE staff are committed to assisting the Attorney General with this matter. Commission staff is also available to assist as required. Please contact Alan Rathbun, Pipeline Safety Director, at (360) 664-1254 if you have any questions.

Sincerely,

Carole J. Washburn  
Executive Secretary