

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

<p>In the Matter of the Penalty Assessment Against</p> <p>AERO CONSTRUCTION</p> <p>in the amount of \$20,000</p>	<p>DOCKET DG-180992</p> <p>ORDER 01</p> <p>INITIAL ORDER APPROVING SETTLEMENT STIPULATION AND AGREEMENT; NOTICE CANCELING HEARING</p>
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BACKGROUND

- 1 On January 24, 2019, the Washington Utilities and Transportation Commission (Commission) assessed a \$20,000 penalty (Penalty Assessment) against Aero Construction (Aero Construction or Company) for three violations of Revised Code of Washington (RCW) 19.122.030 related to excavator and facility operator duties prior to excavation. The violations relate to the Company’s excavations on April 27, 2017, July 26, 2017, and August 30, 2018.
- 2 On February 5, 2019, Aero Construction filed a response to the Penalty Assessment, contesting the violations that occurred on July 26, 2017, and August 30, 2018, and requesting a hearing to present evidence. The Commission scheduled a brief adjudicative proceeding for April 18, 2019.
- 3 On March 22, 2019, Commission staff (Staff)¹ filed with the Commission a settlement agreement on behalf of the parties. On March 29, 2019, Staff filed a revised settlement agreement to correct an error (Settlement Agreement).
- 4 As part of the Settlement Agreement, Aero Construction admits to the violation that occurred on April 27, 2017, and the violation that occurred on July 26, 2017. Aero Construction and Staff stipulate that Aero Construction did not commit the alleged violation that occurred on August 30, 2018. Under the Settlement Agreement, Aero Construction will pay a penalty of \$7,500 for the two violations to which it admits. Aero Construction will pay \$5,000 of the \$7,500 penalty within 30 days after the entry of this

¹ In proceedings such as this, the Commission’s regulatory staff participates like any other party, while an administrative law judge makes the decision. To assure fairness, the presiding administrative law judge does not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

Order, and the remaining \$2,500 of the penalty will be suspended for 12 months from the date of this Order, subject to the condition that Aero Construction commits no violations of chapter 19.122 RCW during that period. Staff agrees that it will not pursue further enforcement against Aero Construction arising out of any of the allegations set forth in the Penalty Assessment. Aero Construction commits to attending Washington 811 safety trainings on April 12, July 26, and October 18, 2019. Finally, Aero Construction commits to making a good faith effort to comply with chapter 19.122 RCW going forward.

5 Joe Dallas, Assistant Attorney General, Olympia, Washington, represents Staff. Jeffrey Wishko, Anderson Hunter Law Firm, Everett, Washington, represents Aero Construction.

DISCUSSION AND DECISION

6 WAC 480-07-750(2) states in part that “[t]he commission will approve a settlement if it is lawful, supported by an appropriate record, and consistent with the public interest in light of all the information available to the commission.” Thus, the Commission considers the individual components of the Settlement Agreement under a three-part inquiry, asking:

- whether any aspect of the proposal is contrary to law;
- whether any aspect of the proposal offends public policy; and
- whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

The Commission must determine one of three possible results:

- approve the proposed settlement without condition;
- approve the proposed settlement subject to conditions; or
- reject the proposed settlement.

7 We approve the Settlement Agreement without condition. The parties agree that Aero Construction violated RCW 19.122.030 on two occasions, and the parties agree that the third alleged violation did not occur. Aero Construction agrees to pay a penalty for its two violations. Suspending a portion of the penalty will deter Aero Construction from violating chapter 19.122 RCW in the future, as will its commitment to comply with the law.

8 Thus, the terms of the Settlement Agreement are not contrary to law or public policy and reasonably resolve all issues in this proceeding. Given these factors, we find that the Settlement Agreement is consistent with the public interest and should be approved as filed on March 22, 2019, and corrected on March 29, 2019.

NOTICE

9 **THE COMMISSION GIVES NOTICE that the hearing set for April 18, 2019, at 9:30 a.m. in Docket DG-180992 is canceled.**

ORDER

THE COMMISSION ORDERS:

- 10 (1) The Settlement Agreement is approved without condition, is attached as Exhibit A to, and incorporated into, this Order, and is adopted as the final resolution of the disputed issues in this docket.
- 11 (2) Aero Construction is assessed a penalty of \$7,500. A \$2,500 portion of the penalty is suspended for a period of 12 months from the date of this Order, and waived thereafter, provided that Aero Construction does not violate chapter 19.122 RCW during that period.
- 12 (3) The \$5,000 portion of the penalty is due and payable on April 30, 2019.
- 13 (4) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective March 29, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NELLI DOROSHKIN
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order and you would like the Order to become final before the time limits expire, you may send a letter to the Commission waiving your right to petition for administrative review.

WAC 480-07-610(7) provides that any party to this proceeding has twenty-one (21) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file an *Response* to a Petition for review within seven (7) days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence that is essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission does not exercise administrative review on its own motion.

Any Petition or Response must be electronically filed through the Commission's web portal, as required by WAC 480-07-140(5).

Exhibit A

Settlement Stipulation and Agreement