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Sent Via FedEx

May 23, 2017

Gregory J. Kopta, Director
Administrative Law Division
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, WA 98504-7250

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2017 MAY 24 AM 10:01
STATE OF WASH.
UTIL. AND TRANS.
COMMISSION

Re: Assessed Entity: TT&E, LLC
Assessment No.: D-170116
Request for Mitigation Hearing

Dear Director Kopta:

This law firm represents TT&E, LLC, the entity assessed under the above-referenced assessment number. We previously sent to you our client's penalty assessment response requesting a Mitigation Hearing. Please accept the following additional information to supplement that request.

Questions of Law/Interpretation of Statutes

1. Excavation of New Developments:

The statutes are silent regarding excavating in new developments. No reasonable expectation exists that utilities will be present in virgin ground. Indeed, the excavator and others actually install utilities in new developments for the first time.

Therefore, the need for utilities locates in new developments is both illogical and unreasonable. However, some of the violations relate to excavating in virgin ground.

2. Performing Post-Foundation Work:

Excavators are routinely called on to perform additional work on site after completing the foundation work. The additional work often involves sewers, water, driveways, walkways, etc. (See eg. Case Nos. 16-032, 16-034, 16-035, 16-036 and 16-039).

If locates were not called in, this additional work would technically violate the statutes. Yet, if the excavator installed the foundation and/utilities in the first place, and marked their location, presumably there would be no need to call for locates if the same excavator then installed sewers, water, driveways, walkways, etc.

3. Excavation Separation Requirements Regarding Plat Utilities:

Foundation excavators typically must dig at least 20-30 feet behind the sidewalk. A house foundation will therefore be located at least 10-20 feet away from power and natural gas main lines servicing the plat. This separation renders it highly improbable that the foundation excavator will interfere, during his activity, with the utilities.

4. Completing Work on Located Projects:

Oftentimes a new excavator will complete work commenced by a prior excavator. If the new excavator uses the locates created during the prior excavator's work, under the Commission's interpretation the new excavator would violate the statute. (See Case No. 16-032).

5. Arbitrary Determination Of Penalties:

RCW 19.122.070(1) authorizes penalties of not more than \$5,000.00 for certain violations. The statutory language offers the Commission the discretion to assess a range of amounts up to the statutory \$5,000.00 maximum. However, the Commission must exercise that discretion in some fair, discernable and logical way.

Here, the Commission's decision indicates no reasoning or justification for imposing the maximum penalty on TT&E for eleven (11) violations.

With respect to Points 1-4 above, these points were addressed at the initial hearing. However, the Commission's decision, and imposition of penalties, fails to address any of these points in any way.

Therefore, we request a Mitigation Hearing to address these five (5) legal questions before an Administrative Law Judge.

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Thank you.

Sincerely,


HERMES LAW FIRM, PSC

RUSSEL J. HERMES

cc: Client Copy