

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of a Penalty Assessment) DOCKET PL-171148
against)
)
SEFNCO COMMUNICATIONS, INC.)
)
in the Amount of \$10,000) NARRATIVE SUPPORTING
) SETTLEMENT AGREEMENT
_____)

I. INTRODUCTION

1 This Narrative Supporting Settlement Agreement (Narrative) is filed pursuant to WAC 480-07-740(2)(a) on behalf of both SEFNCO Communications, Inc. (“SEFNCO” or “Company”) and the Staff of the Washington Utilities and Transportation Commission (Staff). Both parties have signed the settlement agreement (Agreement), which is being filed concurrently with this Narrative. This Narrative summarizes the Agreement. It is not intended to modify any terms of the Agreement.

II. PROPOSALS FOR REVIEW PROCEDURE

2 In accordance with WAC 480-07-730, the parties propose the following settlement consideration procedure for review of the proposed Agreement. The parties believe that this matter is considerably less complex than a general rate proceeding. It was set for hearing as a brief adjudicatory proceeding, which is available for limited types of proceedings including petitions contesting penalty assessments. Accordingly, the parties submit that a hearing on the proposed settlement will not be necessary for the Commission to decide whether to adopt the settlement.

3 The parties do not intend to file documentation supporting the Agreement, with the
exception of the Agreement itself and this Narrative. If the Commission requires supporting
documents beyond the Agreement, Narrative, and the other documents on file in this docket,
the parties will provide documentation as needed.

4 In keeping with WAC 480-07-740(2)(b), the parties are prepared to present one or
more witnesses each to testify in support of the proposal and answer questions concerning
the Agreement's details, and its costs and benefits, should such testimony be required. In
addition, counsel for both parties are available to respond to any questions regarding the
proposed settlement that the Commission may have.

III. SCOPE OF THE UNDERLYING DISPUTE

5 The underlying dispute concerns penalties assessed by the Commission against
SEFNCO for an alleged violation of the Underground Utility Damage Prevention Act,
located at chapter 19.122 RCW. On August 2, 2017, a SEFNCO drill hit and punctured the
McChord Pipeline near Tacoma, Washington. The Commission's pipeline safety staff
conducted an investigation and concluded that SEFNCO had not followed the proper notice
procedure for excavation required in RCW 19.122.030. The Commission issued a penalty
assessment of \$10,000 on December 8, 2017, for one violation of RCW 19.122.030(2). The
penalty assessed is the statutory maximum under RCW 19.122.055 for failure to notify a
one-number locator service and causing damage to a hazardous liquid or underground gas
facility.

6 SEFNCO requested a hearing to contest the violation. The Commission commenced
a brief adjudicatory proceeding and set a hearing. The hearing was rescheduled, pursuant to
an agreed request by the parties. Subsequently, the parties negotiated and reached a full

settlement of the dispute. The Agreement contains the complete terms of the parties' settlement.

IV. DESCRIPTION OF PROPOSED SETTLEMENT

7 The settlement resolves all of the issues in dispute. The settlement provides for payment by SEFNCO of \$10,000, which represents the statutory maximum and the entire amount of the penalty assessment. The payment is not an admission by SEFNCO that a violation occurred, and the absence of SEFNCO's admission does not mean that Staff agrees that a violation did not occur.

8 The settlement provides that Staff will not pursue further enforcement against SEFNCO arising out of the excavation incident of August 2017. Staff is not aware of other potential violations by SEFNCO associated with the underlying incident in this proceeding, and has no plans for additional enforcement proceedings related to the incident.

9 Pursuant to the settlement, SEFNCO has shared the internal report of its Safety Review Board pertaining to the incident. The report indicates that SEFNCO believes it can prevent similar incidents and has identified specific training to reduce the possibility of future utility damage. In addition, under the terms of the settlement, SEFNCO commits to complying with chapter 19.122 RCW going forward.

10 In the settlement, the parties have agreed that SEFNCO is not waiving any current or future legal privilege including by producing the internal Safety Review Board report to the Commission. This term addresses SEFNCO's concerns regarding litigation in other fora and does not purport, in any way, to restrict the Commission's adjudication of this proceeding or its obligations under the Washington Public Records Act.

V. STATEMENT OF PARTIES' INTERESTS AND THE PUBLIC INTEREST

11 As stated in the Agreement, the settlement represents a compromise of the positions
of the two parties. The parties find it is in their best interests to avoid the expense,
inconvenience, uncertainty, and delay inherent in a litigated outcome. Likewise, it is in the
public interest that this dispute conclude without the further expenditure of public resources
on litigation expenses.

12 Staff is satisfied that the Agreement reflects a payment that is appropriate given the
alleged violation and the other terms of this settlement. SEFNCO has not admitted to the
violation, which is unusual in enforcement settlements at the Commission. The Agreement,
however, provides for payment of an amount representing the entirety of the assessed
penalty, which also is unusual. Staff believes that a settlement without an admission to a
violation is appropriate only in very limited circumstances, and is appropriate here given the
settlement terms and the context of this proceeding.

13 SEFNCO's primary interest is to resolve the dispute efficiently and fairly. The
Company anticipates involvement in litigation regarding liability for the pipeline damage in
other fora. SEFNCO has revised internal processes, and has made personnel changes, to
ensure that it is not associated with any similar incidents in the future. With this Agreement
SEFNCO confirms its commitment to compliance with the Underground Utility Damage
Prevention Act and looks forward to maintaining a productive relationship with the
Commission and with other stakeholders associated with underground utilities.

VI. LEGAL POINTS THAT BEAR ON PROPOSED SETTLEMENT

14 In WAC 480-07-700, the Commission states its support for parties' informal efforts
to resolve disputes without the need for contested hearings when doing so is lawful and

consistent with the public interest. The parties have resolved all of the issues in dispute between them, and their resolution complies with Commission rules and, as explained above, is consistent with the public interest.

VII. CONCLUSION

15 Because the parties have negotiated a compromise on all of the issues in this dispute and because the settlement is in the public interest, both parties request that the Commission issue an order approving the Agreement in full.

Respectfully submitted this 25th day of May, 2018.

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