

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) SETTLEMENT AGREEMENT
)
_____)

1 This settlement agreement (Agreement) is entered into by both parties to this
proceeding for the purpose of resolving all issues raised in the above docket.

I. PARTIES

2 The parties to this Agreement are SEFNCO Communications, Inc. (“SEFNCO” or
“Company”), and the Staff of the Washington Utilities and Transportation Commission
(Staff) (collectively, “the Parties”).

II. RECITALS

3 SEFNCO is an excavator whose activities are subject to the Underground Utility
Damage Prevention Act, codified as chapter 19.122 RCW. The Washington Utilities and
Transportation Commission (Commission) administers and enforces the Act.

4 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. RCW 19.122.030.

5 On July 26, 2017, SEFNCO called the one-number locator service, Washington One Call,
and opened a ticket for work to begin July 29, 2017. The ticket lists the dig site location as
9911 Pacific Avenue, in Tacoma, Washington. The “Location of Work” field

reads, “Please place locates from the south side of building to pole and then east bound down 100th St to pole on east side of intersection of A St and 100th to the pole.” Under that, the “Remarks” field states, “Area marked in white.”

6 The address provided is a bank on the corner of Pacific Avenue and 100th Street, and the “location of work” corresponds to the block of 100th Street from Pacific Avenue at the west end to A Street at the east end. SEFNCO was engaged as part of a project to install cable to the bank.

7 SEFNCO placed white paint markings on 100th Street, as required by law, but the location of these marks is disputed. Locators for various facility operators, including McChord Pipeline, placed locate marks on 100th Street in the prescribed colors for each type of service.

8 On August 1, 2017, SEFNCO began drilling west on 100th Street. At some point that day, SEFNCO contacted certain utilities to perform another locate at the site. McChord Pipeline was not contacted.

9 On August 2, 2017, SEFNCO was drilling east on 100th Street, at the east end of the block, toward A Street. Around noon, SEFNCO’s drill hit and punctured the McChord Pipeline, releasing JP8 jet fuel.

10 The Commission’s pipeline safety staff arrived at the damage site the day of the incident and conducted an investigation. The investigation culminated in a recommendation to pursue enforcement against SEFNCO.

11 On December 8, 2017, the Commission served a penalty assessment of \$10,000 on SEFNCO 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.

12 On January 5, 2018, SEFNCO filed a request for a hearing to contest the violation. The Commission commenced a brief adjudicatory proceeding and set a hearing for March 21, 2018. SEFNCO obtained legal counsel, and the Parties agreed to continue the hearing until April 27, 2018.

13 Prior to hearing, on April 24, 2018, the Parties reached a full settlement in principle and notified the Commission. On April 24, 2018, the Commission issued a notice suspending the procedural schedule and requiring the parties to either file a settlement agreement and supporting documentation or a report on the status of their settlement negotiations by May 11, 2018.

III. AGREEMENT

14 The Parties have reached agreement on the issues raised in the above docket and present their 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.

15 The Parties agree that SEFNCO will pay to the Commission \$10,000. This payment does not represent an admission by SEFNCO to the violation, nor, however, does it represent an agreement that the violation did not occur.

16 Staff will not pursue further enforcement against SEFNCO arising out of the excavation at or near 9911 Pacific Avenue, Tacoma, on or about August 2, 2017.

17 The Parties agree that SEFNCO will share with the Commission the internal report of its Safety Review Board pertaining to the incident that occurred on August, 2 2017, and this document is attached to the Settlement as Attachment A. The Parties further agree that SEFNCO does not waive any current or future legal privilege, including but not limited to, work-product privilege by producing documents from the SEFNCO Safety Review Board to Staff or to the Commission.

18 SEFNCO 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 reflects the 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 and agree that neither this Agreement nor any statements or admissions contained herein shall be admissible or used for any purpose in this docket or any other proceeding for any purpose.

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 SEFNCO or SEFNCO'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, principles, methods, or theories employed in arriving at the terms of this Agreement, nor shall any Party be deemed to have agreed that any provision of this Agreement is appropriate 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.

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

SEFNCO COMMUNICATIONS, INC.

ROBERT W. FERGUSON
Attorney General

JENNIFER CAMERON-RULKOWSKI
Assistant Attorney General
WSBA No. 33734
Counsel for the Washington Utilities and
Transportation Commission Staff

Dated: _____, 2018.

Name
Title

Dated: _____, 2018.

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SEFNCO COMMUNICATIONS, INC.

ROBERT W. FERGUSON
Attorney General


JENNIFER CAMERON-RULKOWSKI
Assistant Attorney General
WSBA No. 33734
Counsel for the Washington Utilities and
Transportation Commission Staff

Dated: May 18, 2018.

Name
Title
Dated: _____, 2018.

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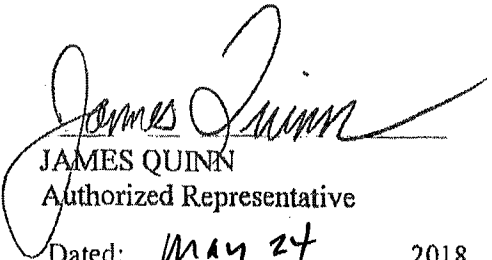
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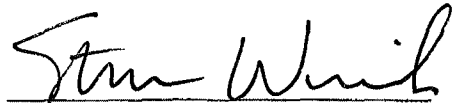
ROBERT W. FERGUSON
Attorney General

JENNIFER CAMERON-RULKOWSKI
Assistant Attorney General
WSBA No. 33734
Counsel for the Washington Utilities and
Transportation Commission Staff

Dated: _____, 2018.


JAMES QUINN
Authorized Representative
Dated: May 24, 2018.

Approved as to form:



STEVEN G. WRAITH

WSBA No. 17364

Counsel for SEFNCO Communications,
Inc.

Dated: May 24, 2018.