

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

<p>In the Matter of the Investigation of</p> <p>SEFNCO COMMUNICATIONS, INC.,</p> <p>For Compliance with RCW 19.122.030(2)</p>	<p>DOCKET PL-171148</p> <p>ORDER 01</p> <p>INITIAL ORDER APPROVING SETTLEMENT AGREEMENT</p>
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**BACKGROUND**

- 1 On December 8, 2017, the Washington Utilities and Transportation Commission (Commission) assessed a \$10,000 penalty (Penalty Assessment) against SEFNCO Communications, Inc. (SEFNCO or Company) for one violation of Revised Code of Washington (RCW) 19.122.030(2). The violation relates to the Company’s excavation on August 2, 2017, when a SEFNCO drill hit and punctured the McChord Pipeline near 9911 Pacific Avenue, Tacoma.
  
- 2 On January 5, 2018, SEFNCO filed a response to the Penalty Assessment, contesting the violation and requesting a hearing to present evidence. On January 29, 2018, the Commission set a brief adjudicative proceeding for March 21, 2018, which was later rescheduled to April 27, 2018. On April 24, 2018, the Commission suspended the procedural schedule at the parties’ request to allow additional time for the parties to file a settlement agreement.
  
- 3 On May 25, 2018, Commission staff (Staff)<sup>1</sup> filed with the Commission a settlement agreement on behalf of the parties (Settlement Agreement).
  
- 4 As part of the Settlement Agreement, SEFNCO agrees to pay to the Commission \$10,000. The Settlement Agreement further provides that payment of the penalty does not constitute an admission that the violation occurred, nor does the absence of an admission mean that Staff concedes the violation did not occur. In addition, Staff agrees it will not

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<sup>1</sup> In formal proceedings such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

**Pursuant to RCW 80.01.060(3)  
This packet is the final order  
In this docket.**

pursue further enforcement action against SEFNCO related to the excavation that occurred at or near 9911 Pacific Avenue, Tacoma, on or about August 2, 2017, which gave rise to the penalty. In addition, SEFNCO agrees it will share with the Commission the internal report of its Safety Review Board pertaining to the incident that occurred on August 2, 2017.<sup>2</sup> 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 the Commission. Finally, SEFNCO commits to comply with chapter 19.122 RCW going forward.

5 Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents Staff. Kyle J. Rekofke, Lee Smart, P.S., Seattle, Washington, represents SEFNCO.

### DISCUSSION AND DECISION

6 WAC 480-07-750(1) states in part: “The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is 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.
- 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.
- Reject the proposed settlement.

7 We approve the Settlement Agreement without condition. The parties made concessions relative to their respective litigation positions to arrive at end results that are supported by the evidence in the record. While SEFNCO does not admit that its conduct violated RCW 19.122.030(2), the Company’s safety review board conducted an investigation of the incident to determine its root cause, and SEFNCO subsequently revised its internal processes and made personnel changes to ensure that similar incidents do not re-occur. In addition, SEFNCO agreed to pay the entire amount of the assessed penalty, which is the

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<sup>2</sup> The report is attached to the Settlement Agreement as Attachment A.

statutory maximum, and has confirmed its commitment to complying with chapter 19.122 RCW going forward.

- 8 While it is unusual for the Commission to approve a settlement in an enforcement proceeding if the Company does not admit to the violation, it is also unusual for parties to agree that the Company should pay the statutory maximum penalty. Payment of the full penalty, coupled with the Company's safety investigation and subsequent internal process changes, satisfactorily demonstrate that the Company understands the seriousness of the incident and is committed to preventing similar incidents in the future. The Company also anticipates involvement in litigation regarding liability for the pipeline damage in other fora, which may provide additional incentive to comply with dig safety laws going forward. Overall, the Settlement Agreement allows Staff to achieve its goal of bringing the Company into compliance with chapter 19.122 RCW while avoiding the expense, inconvenience, uncertainty, and delay inherent in a litigated outcome.
- 9 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 the Settlement Agreement is consistent with the public interest and should be approved as filed.

### **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) SEFNCO Communications, Inc., is assessed a penalty of \$10,000.
- 12 (3) The penalty is due and payable within 20 days of the effective date of this Order.
- 13 (4) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective June 7, 2018.

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**LAURA CHARTOFF**  
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 a *Response* to a Petition for review within seven (7) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

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 fails to 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). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).

Exhibit A  
Settlement Agreement