



**Washington Dig Law Safety Committee  
Stantec (on behalf of SCWSD) vs. PSE  
Supporting Documentation**

**Date:** November 16, 2016

**Case No.:** 16-014

**Time:** 9:00 A.M.

**Location:** Utilities and Transportation Commission Office (UTC)

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- Pages 1 - 8: Letter to PSE dated October 27, 2015 and supporting documentation
- Pages 9 - 10: Construction Change Order No. 4 dated October 13, 2015 assigning right to claim to SCWSD
- Pages 11 - 13: Emails to and from PSE dated October 28 and October 29, 2015 denying claim
- Pages 14 - 16: Letter from SCWSD District Attorney dated November 24, 2015 reviewing PSE denial response
- Pages 17 - 19: Letter from Stantec, on behalf of SCWSD, dated December 11, 2015 to PSE in response to claim denial. Requests response by December 31, 2015
- Pages 20 - 21: Emails to and from PSE on December 11, 2015; December 14, 2015; and January 19, 2016 attempting to obtain response to letter dated December 11, 2015
- Pages 22 - 23: Copy of RCW 19.122.30

## ***SOOS CREEK WATER & SEWER DISTRICT***

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14616 S.E. 192nd St. • P.O. Box 58039 • Renton, WA 98058-1039 • Phone (253) 630-9900 • Fax (253) 630-5289

October 27, 2015

Ms. Jennifer Teichert  
Puget Sound Energy  
10885 NE 4<sup>th</sup> Street PSE-11N  
Bellevue, WA 98009-9734  
[Jennifer.Teichert@pse.com](mailto:Jennifer.Teichert@pse.com)

RE: Soos Creek Water & Sewer District LS No. 46 Conveyance Project  
Unidentified Gas Service claim

Dear Ms. Teichert:

Soos Creek Water & Sewer District (SCWSD) is currently constructing a large regional sewer system improvement project in Covington, WA to improve sewer service to the surrounding community. On August 18<sup>th</sup> the District's contractor, Frank Coluccio Construction Company (FCCC), encountered an unmarked gas service line at approximately Station 36+30. While no damage occurred to the existing gas service, the unmarked service caused the contractor to spend additional time to hand excavate around the utility to install and remove additional shoring required to protect the gas service. In accordance with RCW 19.122, FCCC submitted a change order to SCWSD in the amount of \$20,000 related to the additional time and effort spent protecting the unmarked utility. SCWSD has approved the change order and FCCC has assigned its right to claim for the unmarked utility to SCWSD.

SCWSD formally requests that PSE reimburse the District in the amount of \$20,000 for the unmarked gas service located at approximate Station 36+30. Enclosed with this letter is documentation provided by FCCC in regard to the unmarked gas service, including a copy of the One Call ticket, photo of the unmarked utility, and documentation of the additional time and costs associated with protecting the unmarked gas service.

Sincerely,



Ron Speer  
General Manager

cc: Ken Van Den Bergh – Soos Creek Water & Sewer District  
Mike Hanis – Hanis Irvine Prothero, PLLC  
Gregory G. Hill, PE & Erik Waligorski, PE - Stantec

**Waligorski, Erik**

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**From:** wa@occinc.com  
**Sent:** Thursday, July 23, 2015 3:35 PM  
**To:** Dave McDowell  
**Subject:** Ticket: 15216818

\*\*\*DO NOT REPLY TO THIS EMAIL\*\*\*

Ticket No: 15216818      2 FULL BUSINESS DAYS  
 Send To: C\_EMAIL    Seq No: 1087    Map Ref:

Transmit    Date: 7/23/15    Time: 3:34 PM    Op: orjudy  
 Original Call Date: 7/23/15    Time: 1:29 PM    Op: webusr  
 Work to Begin Date: 7/28/15    Time: 12:00 AM

State: WA      County: KING      Place: COVINGTON  
 Address: 16815    Street: SE WAX ROAD  
 Nearest Intersecting Street: COVINGTON WAY SE & SE 278TH PL

Twp: 22N    Rng: 5E    Sect-Qtr: 36  
 Twp:    Rng:    Sect-Qtr:

Type of Work: EXCAVATION (SEWER MAIN INSTALLATION) Location of Work: LOCATE ALONG WAX ROAD FROM  
 NORTHEAST SIDE OF INTERSECTION  
 : OF COVINGTON WAY SE TO SE 278TH PL.

:  
 : MARK AT LEAST 10FT OFF PAVEMENT EDGE EACH SIDE OF ROAD.  
 :

: SEE ATTACHED.

: GO TO <http://wa.itic.occinc.com/waatSF22-362-QU2-228> TO OBTAIN ADDITIONAL  
 : INFORMATION THAT WAS PROVIDED BY THE EXCAVATOR REGARDING THIS LOCATION.

Remarks: REFRESH - NEEDS REMARKING

: DO NOT MARK NEW PAVEMENT ON COVINGTON WAY!!!

Nad:    Lat:      Lon:      Zone:

Company : FRANK COLUCCIO CONSTRUCTION    Best Time:  
 Contact Name: DAVE MCDOWELL      Phone: (206)793-8364  
 Alt. Contact: MIKE MCGINLEY      Phone: (206)793-1197  
 Work Being Done For: OWNER / FRANK COLUCCIO Additional Members:  
 CC7760    COMCAST CABLE      (425)392-6412  
 COVH2O01    COVINGTON WATER DISTRICT      (253)631-0565  
 KCDPW02    KING COUNTY ROADS      (206)477-2535  
 KCDPW03    KING COUNTY D.O.T.      (206)510-5788  
 PUGE03    PUGET SOUND ENERGY ELECTRIC      (800)778-9140  
 PUGG03    PUGET SOUND ENERGY GAS      (800)778-9140  
 QLNWA16    CTLQL-CENTURYLINK      (800)283-4237  
 SOOSCK01    SOOS CREEK WTR & SWR DIST      (253)630-9900

Please click on the following link to verify and confirm that the area covered represents the correct and complete work site area.

Link To Map for C\_EMAIL: <http://wa.ific.occinc.com/KFT2-36E-QUF-WN8>

If the area covered is incomplete or inaccurate, it is your responsibility to notify the center immediately to update and correct the locate. Failure to do so could result in a delay or an incomplete utility locate.

Any other utilities or notification centers not listed, you will need to contact separately.

Aug 18, 2015

**Today we layed 2 pipe each had side sewer tees we got Both pipe in on the second pipe we found a unmarked Gas line at station 36+50 we had to spend around 1hr hand**

**Digging and verifying that it is live tomorrow this gas line Will cost us a lot of time digging and shoring around**





**COLUCCIO**  
CONSTRUCTION

Soos Creek Water and Sewer District  
C/O Stantec  
11130 NE 33<sup>rd</sup> Place, Suite 200  
Bellevue, Wa 98004-1465  
Attn: Erik Waligorski

9/24/2015

Sent Via Email

**RE: Soos Creek Water and Sewer District – LS No. 46 Conveyance Project  
RFC 012 - Unidentified Gas Service Lines Sta 36+30 and 36+70**

Dear Erik,

On August 18<sup>th</sup>, 2015 we provided RFC 012 regarding the two separate gas service lines not shown on our contract drawings along Wax Road at STA 36+30 and 36+70. One of these gas lines was not located by the 1 Call Utility Locating Service. We have maintained and protected these lines in place as we crossed them.

These lines interfered with our mainline sewer installation. To work around this conflict, we had to excavate by hand as well as with a smaller machine, protect the lines, and install/remove additional shoring. Following is a breakdown of the costs for this work.

Labor	\$ 8,245.20
Equipment	\$ 12,555.51
Material	\$ 0.00
Subcontractor	\$ 0.00
<b>Total</b>	<b>\$ 22,880.78</b>

We propose and request a lump sum change order in the amount of \$20,000 for this work. We also request two additional working days in our change order and added to our contract time. If you have any questions, please contact our field office.

Sincerely  
Frank Coluccio Construction Company

David McDowell  
Project Engineer

Cc: File

**Force Account Summary**

Project: Soos Creek LS46 Conveyance  
 Contractor: Frank Coluccio Construction Company  
 Job #: 2014.06  
 Portion: RFC 012 - Unidentified Gas Service Lines Sta 36+30 and 36+70

Labor:	\$	8,245.20
Labor Markup 10%	\$	824.52
Equipment:	\$	12,555.51
Equipment Markup 10%	\$	1,255.55
Material:	\$	-
Material Markup 10%	\$	-
Subcontractor:	\$	-
Subcontractor Markup 6%	\$	-
<b>Total</b>	<b>\$</b>	<b>22,880.78</b>

	8/19/2015	8/20/2015
Labor:	\$ 4,200.78	\$ 4,044.42
Equipment:	\$ 6,527.43	\$ 6,028.08
Material:	\$ -	\$ -
Subcontractor:	\$ -	\$ -
	<b>\$ 10,728.21</b>	<b>\$ 10,072.50</b>

Labor:					
Equipment:					
Material:					
Subcontractor:					

Labor:					
Equipment:					
Material:					
Subcontractor:					

Labor:					
Equipment:					
Material:					
Subcontractor:					

**Force Account**

**Project:** Soos Creek LS46 Conveyance  
**Contractor:** Frank Coluccio Construction Company  
**Job #:** 2014.06  
**Date:** 8/19/2015

**Portion:** RFC 012 - Unidentified Gas Service Lines Sta 36+30 and 36+70  
 Digging crew Excavating and Shoring Gas Lines

**LABOR**

Name	Occupation	Straight HRS	Rate	OT HRS	OT rate	DT HRS	DT rate	Total
Baker, Dave	Superintendent	6	\$ 75.55		\$ 103.36		\$ 131.17	\$ 453.30
Ursino, Jeff	Operator Foreman I	6	\$ 69.58		\$ 94.41		\$ 119.23	\$ 417.48
Coate, Dave	Operator II	6	\$ 65.81		\$ 88.75		\$ 111.69	\$ 394.86
Whisnant, Donald	Operator II	6	\$ 65.81		\$ 88.75		\$ 111.69	\$ 394.86
McGinnes, Nate	Operator II	6	\$ 65.81		\$ 88.75		\$ 111.69	\$ 394.86
Vanhoof, Troy	Teamster I	6	\$ 58.09		\$ 77.53		\$ 96.97	\$ 348.54
Bates, Jeff	Teamster I	6	\$ 58.09		\$ 77.53		\$ 96.97	\$ 348.54
Domingues, Juan	Laborer III	6	\$ 52.34		\$ 72.27		\$ 92.19	\$ 314.04
Martinez, Jose	Laborer III	6	\$ 52.34		\$ 72.27		\$ 92.19	\$ 314.04
Ruffin, Anthony	Laborer III	6	\$ 52.34		\$ 72.27		\$ 92.19	\$ 314.04
Brown, Marc	Laborer III	6	\$ 52.34		\$ 72.27		\$ 92.19	\$ 314.04
Stevens, Nate	Welder	3	\$ 64.06		\$ 88.29		\$ 112.53	\$ 192.18
								\$ 4,200.78

**EQUIPMENT**

Type	Model	Equipment #	Multiples	QTY	Unit	AGC Rate	Total
Excavator	Hitachi EX750LC-V	1280	1	6	HR	\$ 282.37	\$ 1,694.22
Excavator	Komatsu PC650LC	Rental	1	6	HR	\$ 278.03	\$ 1,668.18
Loader	Cat 950H	1717	1	6	HR	\$ 75.16	\$ 450.96
Dump Truck	KW T800	5001	1	6	HR	\$ 101.72	\$ 610.32
Dump Truck	KW T800	1561	1	6	HR	\$ 101.72	\$ 610.32
Tool Truck	Ford F450	1827	1	6	HR	\$ 27.73	\$ 166.38
Pickup	Chevy 3/4ton 4x4	1706	1	6	HR	\$ 27.70	\$ 166.20
Pickup	Chevy 1/2ton 4x4	1746	1	6	HR	\$ 19.74	\$ 118.44
Excavator	Cat 320C LU	1519	1	6	HR	\$ 89.26	\$ 535.56
Excavator	Takeuchi TB135	1698	1	6	HR	\$ 16.31	\$ 97.86
Welding Truck	GMC 3500HD	1151	1	3	HR	\$ 36.99	\$ 110.97
Backhoe	Case 590 Super M	1620	1	6	HR	\$ 49.67	\$ 298.02
							\$ 6,527.43

**MATERIALS**

Type	Invoice #	QTY	Unit	Unit Cost	Total
					\$ -
					\$ -

**SUBCONTRACTOR**

Sub Name	Invoice #	Total
		\$ -
		\$ -

**TOTALS**

		<b>Subtotal Cost</b>
		\$ 10,728.21
		bonding \$ -
		insurance \$ -
		<b>total \$ 10,728.21</b>



**Force Account**

**Project:** Soos Creek LS46 Conveyance  
**Contractor:** Frank Coluccio Construction Company  
**Job #:** 2014.06  
**Date:** 8/20/2015

**Portion:** RFC 012 - Unidentified Gas Service Lines Sta 36+30 and 36+70  
Digging Crew shoring Gas lines, Backfill

**LABOR**

Name	Occupation	Straight HRS	Rate	OT HRS	OT rate	DT HRS	DT rate	Total
Baker, Dave	Superintendent	6	\$ 75.55		\$ 103.36		\$ 131.17	\$ 453.30
Ursino, Jeff	Operator Foreman I	6	\$ 69.58		\$ 94.41		\$ 119.23	\$ 417.48
Coate, Dave	Operator II	6	\$ 65.81		\$ 88.75		\$ 111.69	\$ 394.86
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McGinnes, Nate	Operator II	6	\$ 65.81		\$ 88.75		\$ 111.69	\$ 394.86
Vanhoof, Troy	Teamster I	6	\$ 58.09		\$ 77.53		\$ 96.97	\$ 348.54
Stevens, Nate	Welder	6	\$ 64.06		\$ 88.29		\$ 112.53	\$ 384.36
Domingues, Juan	Laborer III	6	\$ 52.34		\$ 72.27		\$ 92.19	\$ 314.04
Martinez, Jose	Laborer III	6	\$ 52.34		\$ 72.27		\$ 92.19	\$ 314.04
Ruffin, Anthony	Laborer III	6	\$ 52.34		\$ 72.27		\$ 92.19	\$ 314.04
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**EQUIPMENT**

Type	Model	Equipment #	Multiples	QTY	Unit	AGC Rate	Total
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Excavator	Komatsu PC650LC	Rental	1	6	HR	\$ 278.03	\$ 1,668.18
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Backhoe	Case 590 Super M	1620	1	6	HR	\$ 49.67	\$ 298.02
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Tool Truck	Ford F450	1827	1	6	HR	\$ 27.73	\$ 166.38
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Pickup	Chevy 1/2ton 4x4	1746	1	6	HR	\$ 19.74	\$ 118.44
Excavator	Takeuchi TB135	1698	1	6	HR	\$ 16.31	\$ 97.86
Welding Truck	GMC 3500HD	1151	1	6	HR	\$ 36.99	\$ 221.94
							\$ 6,028.08

**MATERIALS**

Type	Invoice #	QTY	Unit	Unit Cost	Total
					\$ -
					\$ -

**SUBCONTRACTOR**

Sub Name	Invoice #	Total
		\$ -
		\$ -

**TOTALS**

		Subtotal Cost
		\$ 10,072.50
bonding	\$	-
insurance	\$	-
<b>total</b>		<b>\$ 10,072.50</b>

ORIGINAL



**Stantec Consulting Services Inc.**  
 11130 NE 33rd Place, Suite 200  
 Bellevue WA 98004-1465  
 Tel: (425) 869-9448  
 Fax: (425) 869-1190

October 13, 2015

Frank Coluccio Construction Company  
 9600 Martin Luther King Jr. Way South  
 Seattle, WA 98188

**Attention: Mike McGinley**

**Reference: Soos Creek Water & Sewer District  
 Lift Station No. 46 Conveyance  
 Contract No. 04-2011S  
 Construction Change Order No. 4**

**Dear Mike,**

Construction Change Order No. 4 involves the addition of work associated with the maintenance and protection of two unlocated gas service lines, an unidentified 16" steel casing, and an unmarked 2" conduit, and associated time extension to complete the additional work for these items.

The following changes to the Contract are hereby authorized:

<u>ITEM</u>	<u>DESCRIPTION</u>	<u># OF UNITS @ UNIT PRICE</u>	<u>AMOUNT</u>
CO4-1	RFC 012 – Unidentified Gas Service Lines Sta 36+30 & 36+70	1 LS @ \$20,000.00/LS	\$20,000.00
CO4-2	RFC 013 – Unidentified Steel Casing Sta 37+00	1 LS @ \$20,000.00/LS	\$20,000.00
CO4-3	RFC 014 – Gas Service Sta 42+15	1 LS @ \$9,000.00/LS	\$9,000.00
CO4-4	RFC 015 – Unidentified Conduit Sta 43+00	1 LS @ \$20,000.00/LS	\$20,000.00
<b>TOTAL AMOUNT FOR CHANGE ORDER NO. 4</b>			<b>\$69,000.00</b>

Change in Contract Completion Time

Original Contract Completion Date:	Wednesday, July 29, 2015
Construction Change Order No. 1:	Add 10 Calendar Days
Construction Change Order No. 2:	Add 4 Calendar Days
Construction Change Order No. 3:	Add 65 Calendar Days
Construction Change Order No. 4:	Add 7 Calendar Days

Lift Station No. 46 Conveyance  
Contract 04-2011S  
October 13, 2015  
Construction Change Order No. 4  
Page 2 of 2

Adjusted Contract Completion Date:

October 23, 2015

Terms of Change Order

This agreement is full, final, and complete settlement for all claims and/or charges that the Contractor may have with regard to the Contract. Furthermore FCCC agrees to assign all claims against any utility purveyors for failing to locate their existing utilities per RCW 19.122 to Soos Creek Water & Sewer District.

This agreement shall not alter the terms of the Contract and shall be considered only as an addition thereto.

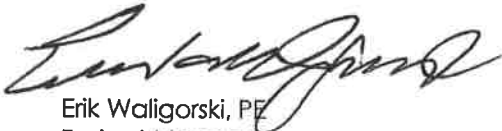
All work done under this Change Order shall be subject to the Provisions of the original Contract as if included therein.

This Change Order is not final until approved by the Board of Commissioners and signed below by both parties.

If you have any questions, please call me at (425) 289-7320.

Sincerely,

STANTEC CONSULTING SERVICES INC.



Erik Waligorski, PE  
Project Manager

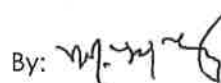
cc: Ken Van Den Bergh, Ken Haines  
Mike Hanis, file

APPROVED DATE: 10/21/15  
Soos Creek Water and Sewer District

By: 

Title: General Manager

APPROVED DATE: 10/13/2015  
Frank Coluccio Construction Company

By: 

Title: Project Manager

**Waligorski, Erik**

---

**From:** Molina, George <george.molina@pse.com>  
**Sent:** Thursday, October 29, 2015 1:30 PM  
**To:** Waligorski, Erik  
**Cc:** 'KVan@sooscreek.com'; 'mhanis@hiplawfirm.com'  
**Subject:** RE: Unmarked PSE Gas Service Claims

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Erik:

Thanks for forwarding the attached information. Based on the information provided from Frank Coluccio Construction, PSE will be denying any and all liability with regards to the alleged unmarked gas line. As I stated in an e-mail yesterday, if an excavator comes across an underground facility that is not identified, they are to stop all excavation and notify 811 or the owner of the underground facility which is the excavator's responsibility according to RCW 19.122.030. Frank Coluccio failed to comply with this section of the RCW.

Also in your e-mail yesterday, you provided me a copy of the amended contract with the construction company however that does not appear to have any binding agreement with PSE due to the fact that if the unmarked underground line did belong to PSE, as we have nothing to say that it does, RCW 19.122.030 clearly states that only the excavator may receive reasonable compensation from the owner of the underground facility if the rules of the RCW are not properly followed.

With regards to the second incident which occurred on 09/16/2015, I am still looking into that matter and will try to have an answer to you by the end of next week as I will be transitioning out of the Claims Department. Thank you.

George Molina  
Senior Claims Agent  
Puget Sound Energy Claims  
(253) 395-6824

---

**From:** Waligorski, Erik [mailto:erik.waligorski@stantec.com]  
**Sent:** Thursday, October 29, 2015 1:02 PM  
**To:** Molina, George  
**Cc:** 'KVan@sooscreek.com'; 'mhanis@hiplawfirm.com'  
**Subject:** RE: Unmarked PSE Gas Service Claims

George,

Please see the attached response from Frank Coluccio Construction in regard to the questions you asked. Please let me know if you have any other questions at this time.

Thank you,

**Erik Waligorski, PE**  
Principal, Water  
Stantec  
11130 NE 33rd Place Suite 200 Bellevue WA 98004-1465  
Phone: (425) 289-7320  
Fax: (425) 869-1190  
erik.waligorski@stantec.com



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**From:** Molina, George [<mailto:george.molina@pse.com>]  
**Sent:** Wednesday, October 28, 2015 11:30 AM  
**To:** Waligorski, Erik  
**Cc:** 'KVan@sooscreek.com'; 'mhanis@hiplawfirm.com'  
**Subject:** RE: Unmarked PSE Gas Service Claims

Mr. Waligorski:

Your e-mail was forwarded to my attention as I handle claims for this area. I am going to need some clarification with regards to the August 18<sup>th</sup> incident. Did the contractor contact PSE about the unmarked line when it was encountered and if so, who was contacted and what was discussed on scene?

RCW 19.122.030 states that if an excavator discovers underground facilities that are not identified, the excavator must cease excavating in the vicinity of the underground facilities and immediately notify the facility operator or a one-number locator service.

RCW 19.122.030 also states that an excavator has the right to receive reasonable compensation from a facility operator for costs incurred by the excavator if the facility operator does not locate its underground facilities in accordance with the requirements specified in this section.

Since Soos Creek Water and Sewer District was not the excavator then they are not entitled to any compensation per RCW 19.122.030 which clearly states that only the excavator has the right to receive reasonable compensation.

With regards to the incident on September 16, 2015, I am going to need to know what time the incident occurred so I can look for further information regarding that matter. Thank you.

George Molina  
Senior Claims Agent  
Puget Sound Energy Claims  
(253) 395-6824

---

**From:** Waligorski, Erik [<mailto:erik.waligorski@stantec.com>]  
**Sent:** Wednesday, October 28, 2015 10:20 AM  
**To:** Teichert, Jennifer  
**Cc:** Ron Speer; Ken Van Den Bergh ([KVan@sooscreek.com](mailto:KVan@sooscreek.com)); Mike Hanis ([mhanis@hiplawfirm.com](mailto:mhanis@hiplawfirm.com)); Hill, Gregory  
**Subject:** Unmarked PSE Gas Service Claims

Jennifer,

Please see the attached letters and corresponding backup information related to two instances where unmarked PSE gas service lines impacted the construction of Soos Creek Water and Sewer District's Lift Station No. 46 Conveyance project in the City of Covington, WA. The District appreciates your consideration in this matter.

Thank you,

---

**Erik Waligorski, PE**  
Principal, Water  
Stantec  
11130 NE 33rd Place Suite 200 Bellevue WA 98004-1465  
Phone: (425) 289-7320  
Fax: (425) 869-1190  
[erik.waligorski@stantec.com](mailto:erik.waligorski@stantec.com)



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Gregory F. Cromwell  
Gregory L. Girard  
Brian J. Hanis  
Michael M. Hanis  
Patrick M. Hanis

Jennifer R. Hill  
Cynthia A. Irvine\*  
Erik R. Olsen  
Florian D. Purganan  
Brittan Schwartz

Dennis J. Shanlian\*\*  
Mary Beth Sheehan  
Peter B. Wilburn

\*Also admitted in VA  
\*\*CPA/LLM

Date: November 24, 2015  
To: Erik Waligorski, Stantec  
Ken Van Den Bergh and Ron Speer  
Soos Creek Water and Sewer District  
Re: PSE Response to Claim re: Un-located Gas Line

Erik:

The District has requested that I provide a legal response to the Puget Sound Energy (PSE) answer to our Contractor claim for an un-located gas line. I understand you may use this Memorandum in your response to PSE, and have written it with that in mind.

PSE has raised essentially three defenses: 1) That the applicable statute only allows an “excavator” to make a claim (i.e., can’t be assigned); 2) that the Contractor (Coluccio) did not comply with the Locate statute re: notification to the utility owner when it discovered an un-located gas line; and 3) PSE did not act negligently in performing its locate functions under RCW 19.122.030. This Memorandum will deal with each in turn.

1) PSE asserts that the Excavator’s claim may not be assigned to the District.

The Contractor, by definition under the statute, is the “excavator”. The District has chosen to settle this and other matters with the Contractor by change order; and as a part of that settlement, has taken an assignment of the “excavator’s” claim. Is the excavator’s claim assignable?

The traditional *test for assignability* of a cause of action in Washington is this: “Does the cause of action survive to the personal representative of the assignor? If it does, the cause of action is assignable.” [Citations omitted]

The legislature has provided for the survival of all causes of action in Washington, subject to certain limitations upon who may recover for “damages for pain and suffering, anxiety, emotional distress, or humiliation personal to and suffered by a deceased....” RCW 4.20.046(1).

The cited statute provides as follow:

RCW 4.20.046(1) *All causes of action* by a person or persons against another person or persons *shall survive* to the personal representatives of the former and against the personal representatives of the latter, *whether such actions arise on contract or otherwise*, and whether or not such actions would have survived at the common law or prior to the date of enactment of this section:

[Emphasis added]

November 24, 2015  
 Erik Waligorski, Stantec  
 Page 2 of 3

The excavator's claim, being within the universe of "all actions", is assignable, and has been assigned to the District.

2) PSE asserts that Coluccio did not comply with the statute regarding notification.

a) Coluccio has provided evidence that it did comply. On October 29, 2015, Dave McDowell of Coluccio provided an email indicating he would have called the 811 Call Center for verification when they struck the gas line on September 16. He notes that they made multiple calls to the Call Center for both communications and gas lines, establishing a pattern of compliance.

A call to the Call Center is reasonable compliance here. The statute does not specify written notice. Further, it permits a call to *either* the facility operator or the call center. I note that recently PSE questioned whether the gas line was theirs. If they don't know, Coluccio could not be expected to know.

b) Even if Coluccio did not comply, its claim would not be invalidated. PSE would only have a possible defense to a portion of the amount of the claim to the extent it might have somehow mitigated the damages with such notice.

In George Molina's email of October 29, 2015, PSE contends that "RCW 19.122.030 clearly states that *only* the excavator may receive reasonable compensation from the owner of the underground facility if the rules of the RCW are not properly followed." The RCW is nowhere near as clear as PSE contends; and even if it were, there is nothing about the RCW that would preclude the excavator's entitlement being assigned and pursued by an assignee.

The pertinent portions of RCW 19.122.030 are the following:

(7) An excavator has the right to receive reasonable compensation from a facility operator for costs incurred by the excavator if the facility operator does not locate its underground facilities in accordance with the requirements specified in this section.

(8) A facility operator has the right to receive reasonable compensation from an excavator for costs incurred by the facility operator if the excavator does not comply with the requirements specified in this section.

....

(10) If an excavator discovers underground facilities that are not identified, the excavator must cease excavating in the vicinity of the underground facilities and immediately notify the facility operator or a one-number locator service. . . .

The 'penalty' if an excavator "does not comply" is a potential recovery of costs *incurred* by the facility operator. The record does not show any costs were incurred by



November 24, 2015  
Erik Waligorski, Stantec  
Page 3 of 3

PSE as a consequence of this event. Additionally, there is nothing in the statute that would also deprive an excavator from recovering reasonable compensation for its costs incurred by the facility operator's failure to comply. In this instance, those costs have been well-documented, and the claim for them has been properly assigned to the District.

- 3) PSE asserts that it did not act negligently in performing its locate functions under RCW 19.122.030.

There is nothing in the statute about negligence being a defense or otherwise. RCW 19.122.030(c) does provide that a "facility operator's good faith attempt to comply with subsection (3)(b) and (c) of this section" constitutes "full compliance". (3) (b) and (c) require more, however, than was done here by PSE to comply with the statute regarding unidentified or unlocatable facilities (provide available information).

Please let me know if you require additional information.

Michael M. Hanis



HANIS IRVINE PROTHERO PLLC

Cc: Client


**Stantec**

 Stantec Consulting Services Inc.  
 11130 NE 33rd Place, Suite 200, Bellevue WA 98004-1465

 December 11, 2015  
 File: 2002001055.500

 Puget Sound Energy  
 10885 NE 4th Street PSE-11N  
 Bellevue, WA 98009-9734

**Attention: George Molina**

 Re: Unidentified Gas Service Claims – PSE Claim Number: 6000002144  
 Soos Creek Water and Sewer District  
 Lift Station No. 46 Conveyance; Contract 04-2011S

Dear George:

The District has reviewed your letter dated November 2, 2015 claiming that PSE has complied with the rules of RCW 19.122.030 and cannot be held liable for any damages or losses as a result of its failure to locate its utilities on the specified project. Your letter further states that, according to Section 3, Subsection (a) of RCW 19.122.030, that PSE is only required to "provide the excavator with reasonable accurate information by marking their location", in reference to your underground facilities. You claim this was completed by PSE prior to excavation. Your letter states that based on the information provided, you cannot find any *negligence* on behalf of PSE and have declined the District's claim.

Based on the information contained in your letter dated November 2, 2015 and your email to me dated October 29, 2015, you have raised essentially three defenses in your denial of the District's claim: 1) That RCW 19.122.030 only allows "the excavator" to make a claim (i.e., it can't be assigned); 2) that the Contractor (Coluccio) did not comply with the RCW regarding notification to the utility owner when it discovered the un-located gas service line; and 3) that PSE did not act negligently in performing its locate functions under the RCW. This letter will deal with each claim in turn.

1. Claim that the Excavator's claim may not be assigned to the District.

The Contractor (Coluccio), by definition under RCW 19.122, is the "excavator". The District has chosen to settle this and other matters with the Contractor by change order; and as part of that settlement, has taken an assignment of the "excavator's" claim. The legislature, as part of RCW 4.20.046 – Survival of actions, has provided for the survival of all causes of action in Washington.

The cited statute provides as follows:

RCW 4.20.046(1) *All causes of action by a person or persons against another person or persons shall survive to the personal representatives of the former and against the personal representatives of the latter, whether such actions arise on contract or otherwise, and whether or not such actions would have survived at the common law or prior to the date of enactment of this section:*

As such, the excavator's claim, being within the universe of "all actions", is assignable, and has

Design with community in mind

been assigned to the District.

2. Claim that the excavator (Coluccio) did not comply with the statute regarding notification

RCW 19.122.030(10) states that the excavator must "notify the facility operator or a one-number locator service". On October 29, 2015, Dave McDowell of Coluccio provided an email indicating that he would have called the 811 call center to have them verify the gas service line when it was discovered. He stated that Coluccio knew where the gas main line was, but that the line in question was a service line to the home. He further states that Coluccio has made multiple calls to the 811 call center for both communications and gas lines, thus establishing a pattern of compliance with RCW 19.122.030. Even if Coluccio did not comply with the notification requirement, its claim would not be invalidated. PSE would only have a possible defense to a portion of the amount of the claim to the extent that PSE might have somehow mitigated the damages with such notice.

In your email dated October 29, 2015, you state that "only the excavator may receive reasonable compensation from the owner of the underground facility if the rules of the RCW are not properly followed". Nowhere in RCW 19.122.030 is it stated that "only" the excavator may receive reasonable compensation and furthermore, there is nothing in RCW 19.122.030 that precludes the excavator's entitlement being assigned and pursued by an assignee.

3. Claim that PSE did not act negligently in performing its locate functions under RCW 19.122.030.

There is nothing in RCW 19.122.030 about negligence being a defense or otherwise. Section 4, Subsection (c) of RCW 19.122.030 does provide that a "facility operator's good faith attempt to comply with subsection (3)(b) and (c) of this section" constitutes "full compliance". That being said, it should be noted that subsection (3)(c) requires the facility operator to locate "Service laterals, designate their presence or location, if the service laterals: (i) Connect end users to the facility operator's main utility line." PSE failed to locate its service laterals in this instance at two locations, and is therefore liable for the damages incurred due to that failure.

Based on the information provide above, in addition to the claim back up information provided to PSE in the letters dated October 27, 2015, the District asserts that PSE is in fact liable for the damages caused to the excavator (Coluccio Construction), which have been assigned to the District via the change order executed on October 21, 2015, and requests full reimbursement for the damages in the amount of \$29,000. Failure of PSE to resolve this claim will force the District to take legal action to recover the associated costs related to the damages in question.

Please provide a response no later than close of business, Thursday, December 31, 2015.

Regards,

**STANTEC CONSULTING SERVICES INC.**



Erik Waligorski, PE  
Project Manager  
Phone: (425) 289-7320  
Erik.waligorski@stantec.com

- c. Ron Speer, Ken Van Den Bergh - SCWSD  
Mike Hanis – Hanis Irvine Prothero PLLC  
Greg Hill, file - Stantec

**Erik Waligorski**

---

**From:** Molina, George <george.molina@pse.com>  
**Sent:** Tuesday, January 19, 2016 7:55 AM  
**To:** Waligorski, Erik  
**Cc:** Pagulayan, Rodel V.  
**Subject:** RE: Unmarked PSE Gas Service Claims

It is 253-476-6243 and I will cc him in on this e-mail

---

**From:** Waligorski, Erik [mailto:erik.waligorski@stantec.com]  
**Sent:** Tuesday, January 19, 2016 7:55 AM  
**To:** Molina, George  
**Subject:** RE: Unmarked PSE Gas Service Claims

George,

Can you please forward me Rodel's contact information. I have had no response from Rodel regarding this matter.

Thank you,

**Erik Waligorski, PE**  
Principal, Water  
Stantec  
11130 NE 33rd Place Suite 200 Bellevue WA 98004-1465  
Phone: (425) 289-7320  
Fax: (425) 869-1190  
erik.waligorski@stantec.com



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**From:** Molina, George [mailto:george.molina@pse.com]  
**Sent:** Monday, December 14, 2015 4:48 AM  
**To:** Waligorski, Erik  
**Cc:** 'KVan@sooscreek.com'; 'mhanis@hiplawfirm.com'; Ron Speer; Hill, Gregory  
**Subject:** RE: Unmarked PSE Gas Service Claims

Erik:

I have forwarded this matter on to PSE Claims Agent Rodel Pagulayan for his review as I am no longer with the Claims Department at PSE. Thanks.

George Molina  
Metering Network Services Supervisor

Internal: 82-6837

External: (425) 395-6837

Cell: (253) 886-1840

---

**From:** Waligorski, Erik [<mailto:erik.waligorski@stantec.com>]  
**Sent:** Friday, December 11, 2015 8:37 AM  
**To:** Molina, George  
**Cc:** 'KVan@sooscreek.com'; 'mhanis@hiplawfirm.com'; Ron Speer; Hill, Gregory  
**Subject:** RE: Unmarked PSE Gas Service Claims

George,

Please see the attached letter responding to PSE's denial of the District's claim for failing to locate your existing services. I would ask that you respond to the letter no later than Thursday, December 31<sup>st</sup>.

Regards,

**Erik Waligorski, PE**  
Principal, Water  
Stantec  
11130 NE 33rd Place Suite 200 Bellevue WA 98004-1465  
Phone: (425) 289-7320  
Fax: (425) 869-1190  
[erik.waligorski@stantec.com](mailto:erik.waligorski@stantec.com)



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**From:** Molina, George [<mailto:george.molina@pse.com>]  
**Sent:** Thursday, October 29, 2015 1:30 PM  
**To:** Waligorski, Erik  
**Cc:** 'KVan@sooscreek.com'; 'mhanis@hiplawfirm.com'  
**Subject:** RE: Unmarked PSE Gas Service Claims

**RCW 19.122.030****Excavator and facility operator duties before excavation.**

(1)(a) Unless exempted under RCW 19.122.031, before commencing any excavation, an excavator must mark the boundary of the excavation area with white paint applied on the ground of the worksite, then provide notice of the scheduled commencement of excavation to all facility operators through a one-number locator service.

(b) If boundary marking required by (a) of this subsection is infeasible, an excavator must communicate directly with affected facility operators to ensure that the boundary of the excavation area is accurately identified.

(2) An excavator must provide the notice required by subsection (1) of this section to a one-number locator service not less than two business days and not more than ten business days before the scheduled date for commencement of excavation, unless otherwise agreed by the excavator and facility operators. If an excavator intends to work at multiple sites or at a large project, the excavator must take reasonable steps to confer with facility operators to enable them to locate underground facilities reasonably in advance of the start of excavation for each phase of the work.

(3) Upon receipt of the notice provided for in subsection (1) of this section, a facility operator must, with respect to:

(a) The facility operator's locatable underground facilities, provide the excavator with reasonably accurate information by marking their location;

(b) The facility operator's unlocatable or identified but unlocatable underground facilities, provide the excavator with available information as to their location; and

(c) Service laterals, designate their presence or location, if the service laterals:

(i) Connect end users to the facility operator's main utility line; and

(ii) Are within a public right-of-way or utility easement and the boundary of the excavation area identified under subsection (1) of this section.

(4)(a) A facility operator must provide information to an excavator pursuant to subsection (3) of this section no later than two business days after the receipt of the notice provided for in subsection (1) of this section or before excavation commences, at the option of the facility operator, unless otherwise agreed by the parties.

(b) A facility operator complying with subsection (3)(b) and (c) of this section may do so in a manner that includes any of the following methods:

(i) Placing within a proposed excavation area a triangular mark at the main utility line pointing at the building, structure, or property in question, indicating the presence of an unlocatable or identified but unlocatable underground facility, including a service lateral;

(ii) Arranging to meet an excavator at a worksite to provide available information about the location of service laterals; or

(iii) Providing copies of the best reasonably available records by electronic message, mail, facsimile, or other delivery method.

(c) A facility operator's good faith attempt to comply with subsection (3)(b) and (c) of this section:

(i) Constitutes full compliance with the requirements of this section, and no person may be found liable for damages or injuries that may result from such compliance, apart from liability for arranging for repairs or relocation as provided in RCW 19.122.050(2); and

(ii) Does not constitute any assertion of ownership or operation of a service lateral by the facility operator.

(d) An end user is responsible for determining the location of a service lateral on their property or a service lateral that they own. Nothing in this section may be interpreted to require an end user to subscribe to a one-number locator service or to locate a service lateral within a right-of-way or utility easement.

(5) An excavator must not excavate until all known facility operators have marked or provided information regarding underground facilities as provided in this section.

(6)(a) Once marked by a facility operator, an excavator is responsible for maintaining the accuracy of the facility operator's markings of underground facilities for the lesser of:

(i) Forty-five calendar days from the date that the excavator provided notice to a one-number locator service pursuant to subsection (1) of this section; or

(ii) The duration of the project.

(b) An excavator that makes repeated requests for location of underground facilities due to its failure to maintain the accuracy of a facility operator's markings as required by this subsection (6) may be charged by the facility operator for services provided.

(c) A facility operator's markings of underground utilities expire forty-five calendar days from the date that the excavator provided notice to a one-number locator service pursuant to subsection (1) of this section. For excavation occurring after that date, an excavator must provide additional notice to a one-number locator service pursuant to subsection (1) of this section.

(7) An excavator has the right to receive reasonable compensation from a facility operator for costs incurred by the excavator if the facility operator does not locate its underground facilities in accordance with the requirements specified in this section.

(8) A facility operator has the right to receive reasonable compensation from an excavator for costs incurred by the facility operator if the excavator does not comply with the requirements specified in this section.

(9) A facility operator is not required to comply with subsection (4) of this section with respect to service laterals conveying only water if their presence can be determined from other visible water facilities, such as water meters, water valve covers, and junction boxes in or adjacent to the boundary of an excavation area identified under subsection (1) of this section.

(10) If an excavator discovers underground facilities that are not identified, the excavator must cease excavating in the vicinity of the underground facilities and immediately notify the facility operator or a one-number locator service. If an excavator discovers identified but unlocatable underground facilities, the excavator must notify the facility operator. Upon notification by a one-number locator service or an excavator, a facility operator must allow for location of the uncovered portion of an underground facility identified by the excavator, and may accept location information from the excavator for marking of the underground facility.

[ 2011 c 263 § 4; 2000 c 191 § 17; 1988 c 99 § 1; 1984 c 144 § 3.]

#### NOTES:

**Report—Effective date—2011 c 263:** See notes following RCW 19.122.010.

**Intent—Findings—Conflict with federal requirements—Short title—Effective date—2000 c 191:** See RCW 81.88.005 and 81.88.900 through 81.88.902.

*Damages to facilities on state highways: RCW 47.44.150.*