

October 27, 2021

Amanda Maxwell, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
621 Woodland Square Loop SE  
Lacey, WA 98503

RE: *Washington Utilities and Transportation Commission v. Big D's Excavation, LLC*  
Commission Staff's Response to Contest of Violations  
Docket DG-210548

Dear Ms. Maxwell:

On September 13, 2021, the Washington Utilities and Transportation Commission (Commission) issued a \$1,000 penalty against Big D's Construction, LLC. (Big D's or Company) for a violation of RCW 19.122.055, that occurred on April 2, 2021.

This violation was for damage to an underground natural gas facility, which occurred on April 2, 2021, at Sherry Court, Pasco, Washington. The Company failed to provide the required notice to facility operators through the one-call utility locator service as required before excavating and subsequently causing damage to an underground natural gas facility.

On September 21, 2021, the Company responded to the Commission's penalty assessment and contested the violation, stating that the Company had a locate ticket that covered the area in question and that it was an old, abandoned line. The copy of the ticket provided described the location of work as "ROW to ROW along Rd 52 from the Southern Intersection of Sylvester and Road 52 to the intersection of Road 52 and Whitetail Ct."

On September 29, 2021, staff requested additional information from the Company to support their claim of the damage falling within the scope of the ticket. As of the date of this letter, staff has not had a response from the Company.

Staff believes the original penalty should be upheld based on consideration of the following factors:

1. **Whether the company demonstrates that the facts considered by the Commission underlying the assessment were incorrect or do not support the penalty assessed.** Big D's did not demonstrate that the Commission's assessment was incorrect. The information provided in Big D's contest is the same information that was provided during the investigation and does not explain how the damage location was within the scope of the locate ticket, while Staff's investigation indicated that the damage location was more than 100 feet west of Road 52's right of way (ROW). Big D's did not provide any additional information that would relieve them of their duty to obtain underground utility locates for that location before beginning excavation. Big D's contest also claims that the damaged facility was an "old, abandoned line", however, CNG reports that the damaged facility was a newly installed service line, albeit one not yet actively carrying gas. Staff notes that whether the underground facility was carrying gas at the time of damage is not materially relevant to RCW 19.122.

2. **Whether the company demonstrates that information or factors exist that the Commission may not have considered.** Big D's did not present any new information that would have changed the findings of the violation or the assessed penalty amount.
3. **Whether the company explains other circumstances that convince the Commission that this violation did not occur or that a lesser penalty will be equally effective in ensuring compliance.** Big Ds did not explain any other circumstances to support that the violation did not occur. Big D's did not provide additional information in response to follow-up inquiries from Staff. Prior to making its penalty recommendation, Staff also considered information provided by CNG that CNG chose not to bill Big D's for the damage. Staff considered the need for a compliance action along with the needs of the company when setting the recommended penalty amount. Given that the Commission previously issued Big D's a warning letter and a \$1,000 penalty for previous violations, Staff determined that the recommended penalty was fair and necessary given the circumstances of the violation.

If you have any questions, please contact Joice Hagen at (360) 664-1321, or by email at [Joice.Hagen@utc.wa.gov](mailto:Joice.Hagen@utc.wa.gov).

Sincerely,

Sean C. Mayo, Director  
Pipeline Safety