



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

Date: November 16, 2016

Case No.: 16-015

Time: 9:00 A.M.

Location: Utilities and Transportation Commission Office (UTC)

- Pages 1 - 10: Letter to PSE dated October 27, 2015 and supporting documentation
- Page 11: Photo of locate in field in relation to actual location of gas strike
- Pages 12 - 13: Construction Change Order No. 4 dated October 13, 2015 assigning right to claim to SCWSD
- Page 14: Letter from PSE dated November 2, 2015 denying claim
- Pages 15 - 17: 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 18 - 19: 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 20 - 21: Copy of RCW 19.122.30

SOOS CREEK WATER & SEWER DISTRICT

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 4th Street PSE-11N
Bellevue, WA 98009-9734
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 September 16th the District's contractor, Frank Coluccio Construction Company (FCCC), encountered an unmarked gas service line at approximately Station 42+15. The existing gas service line was installed in a 2-inch diameter steel casing. The gas service was damaged during construction and was repaired by PSE crews who were in the area. The repair of the gas service line by PSE caused delays to FCCC and required FCCC to install and remove additional shoring required to protect the gas service once it was repaired. In accordance with RCW 19.122, FCCC submitted a change order to SCWSD in the amount of \$9,000 related to down time while the gas service line was repaired and 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 \$9,000 for the unmarked gas service located at approximate Station 42+15. Enclosed with this letter is documentation provided by FCCC regarding 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 Wallgorski, PE - Stantec

Waligorski, Erik

From: wa@occinc.com
Sent: Friday, September 04, 2015 12:08 PM
To: Dave McDowell
Subject: Ticket: 15264901

DO NOT REPLY TO THIS EMAIL

Ticket No: 15264901 2 FULL BUSINESS DAYS
 Send To: C_EMAIL Seq No: 443 Map Ref:

Transmit Date: 9/04/15 Time: 12:08 PM Op: orbert
 Original Call Date: 9/04/15 Time: 10:39 AM Op: webusr
 Work to Begin Date: 9/10/15 Time: 12:00 AM

State: WA County: KING Place: COVINGTON
 Address: 16943 Street: SE WAX ROAD
 Nearest Intersecting Street: SE 278TH PL

Twp: 22N Rng: 5E Sect-Qtr: 36-SW-NW-NE
 Twp: Rng: Sect-Qtr:

Type of Work: EXCAVATION (SEWER MAIN INSTALLATION) Location of Work: FROM INTERSECTION OF SE 278TH PL,
 LOCATE ROW OF SE WAX ROAD
 : APPROX 850FT NE TO COVINGTON ELEMENTARY SCHOOL.
 :
 : LOCATE 10FT OFF PAVEMENT EDGE EACH SIDE OF ROAD.
 :
 : SEE ATTACHED MAP.
 :
 : BEST INFO AVAIL
 : GO TO <http://wa.itic.occinc.com/wa0tSR2Z-222-22T-AQU> TO OBTAIN ADDITIONAL
 : INFORMATION THAT WAS PROVIDED BY THE EXCAVATOR REGARDING THIS LOCATION.

Remarks: REFRESH - NEEDS REMARKING

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
 COVH2001 COVINGTON WATER DISTRICT (253)631-0565
 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.itic.occinc.com/KRNZ-E2T-FWT-AQU>

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.

Home > Public Safety > Pipeline Safety

DamageReportForm: Respond to this Survey

Who is providing this information? *

Excavator ▼

Company Providing Information *

Frank Coluccio Construction

Type of Event *

Underground ▼

Date of event *

9/16/15 4 PM 15 ▼

County *

WA - King ▼

City *

Covington

Street Address

17026 SE Wax Rd

Nearest Intersection

SE 278th PL

Type of right-of-way where damage occurred *

Public - City Street ▼

What type of facility operation was affected? *

Natural Gas ▼

What type of facility was affected? *

Service/Drop ▼

Was this facility part of a joint trench?

No ▼

Was the facility owned a member of One-Call? *

Yes ▼

Type of excavator *

Contractor ▼

Type of excavation equipment *

Backhoe/Trackhoe ▼

Type of work performed *

Sewer (Sanitary/Storm) ▼

Was the one-call center notified? *

Yes ▼

***If yes, choose the one-call center**

Call Before You Dig - Washington ▼

***If yes, please provide the ticket number**

15264901

Type of locator *

Unknown/Other ▼

Were facility locate marks visible in the area of the excavation? *

Yes ▼

Were facilities marked correctly? *

No ▼

Did the excavator incur downtime?

Yes ▼

If yes, how much time?

3.5 HR

Estimated cost of downtime?

Unknown

Was there damage to a facility? *

Yes ▼

Did the damage cause an interruption in service? *

Yes ▼

If yes, duration of the interruption *

2 to 4 hours ▼

Approximately how many customers were affected?

3

Estimated cost of damage repair/restoration

Unknown

Number of people injured

0

Number of fatalities

0

Choose a first-level cause *

Locating practices not sufficient ▼

Additional comments

Incorrectly located utility service line. Nearest gas service marks approx 10' away from line.

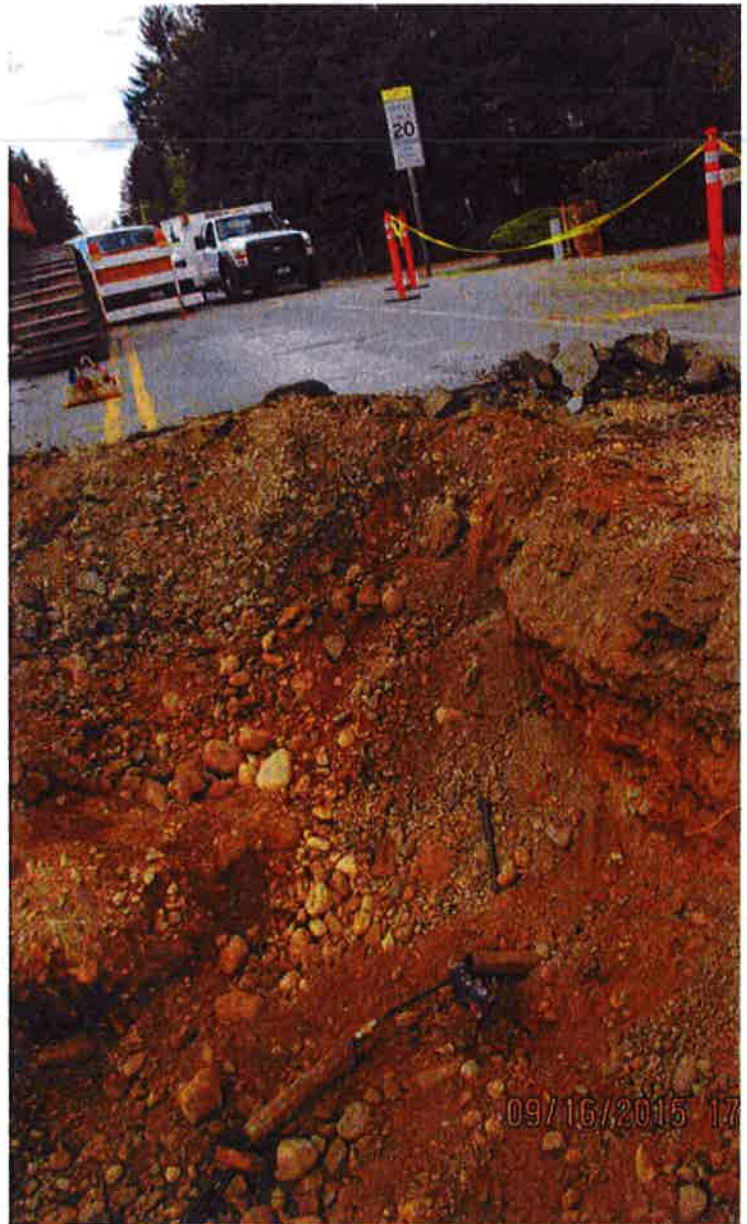
Finish Cancel

Sep 16, 2015

Today we plumbed a temp water service for the home with

The shallow well

**We also layed 2 pipe one had 2 tees a 6" and a 8" then
In the 3rd set we hit a unmarked 2" steel casing with a
Gas line inside it turned out to be a service for 3 houses**



A

Sep 16, 2015

**nd was 14' off the closes locate so that shut us down
And had to have gas company come fix before we could
Close up and make safe for the night**





COLUCCIO
CONSTRUCTION

Soos Creek Water and Sewer District
C/O Stantec
11130 NE 33rd 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 014 - Gas Service STA 42+15**

Dear Erik,

On September 16th, 2015 we provided RFC 014 regarding the damaged unmarked 5/8" gas line not shown on our contract drawings. The line was not properly located by the 1 Call Utility Locating Service.

This unmarked line caused the crew to work late while PSE repaired the line. This line also interfered with our work as we passed it. Please see the cost breakdown below:

Labor	\$ 3,340.50
Equipment	\$ 5,005.10
Material	\$ 0.00
Subcontractor	\$ 0.00
Total	\$ 9,180.16

We propose and request a lump sum change order in the amount of \$9,000 for this work. We also request one additional working day 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 014 - Gas Service STA 42+15

		9/16/2015	
Labor:	\$	3,340.50	
Equipment:	\$	5,005.10	
Material:	\$	-	
Subcontractor:	\$	-	
	\$	8,345.60	

Labor:	\$	3,340.50
Labor Markup 10%	\$	334.05
Equipment:	\$	5,005.10
Equipment Markup 10%	\$	500.51
Material:	\$	-
Material Markup 10%	\$	-
Subcontractor:	\$	-
Subcontractor Markup 6%	\$	-
Total	\$	9,180.16

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: 9/16/2015

Portion: RFC 014 - Gas Service STA 42+15
 Digging Crew standby for unmarked/incorrectly marked gas line STA 42+15

LABOR

Name	Occupation	Straight HRS	Rate	OT HRS	OT rate	DT HRS	DT rate	Total
Baker, Dave	Superintendent	5	\$ 75.55		\$ 103.36		\$ 131.17	\$ 377.75
Ursino, Jeff	Operator Foreman I	5	\$ 69.58		\$ 94.41		\$ 119.23	\$ 347.90
Coate, Dave	Operator II	5	\$ 65.81		\$ 88.75		\$ 111.69	\$ 329.05
Whisnant, Donald	Operator II	5	\$ 65.81		\$ 88.75		\$ 111.69	\$ 329.05
McGinnes, Nate	Operator II	5	\$ 65.81		\$ 88.75		\$ 111.69	\$ 329.05
Vanhoof, Troy	Teamster I	5	\$ 58.09		\$ 77.53		\$ 96.97	\$ 290.45
Bates, Jeff	Teamster I	5	\$ 58.09		\$ 77.53		\$ 96.97	\$ 290.45
Domingues, Juan	Laborer III	5	\$ 52.34		\$ 72.27		\$ 92.19	\$ 261.70
Martinez, Jose	Laborer III	5	\$ 52.34		\$ 72.27		\$ 92.19	\$ 261.70
Brown, Marc	Laborer III	5	\$ 52.34		\$ 72.27		\$ 92.19	\$ 261.70
Ruffin, Anthony	Laborer III	5	\$ 52.34		\$ 72.27		\$ 92.19	\$ 261.70
								\$ 3,340.50

EQUIPMENT

Type	Model	Equipment #	Multiples	QTY	Unit	AGC Rate	Total
Excavator	Hitachi EX750LC-V	1280	1	5	HR	\$ 282.37	\$ 1,411.85
Excavator	Komatsu PC650LC	Rental	1	5	HR	\$ 278.03	\$ 1,390.15
Loader	Volvo L110F	1643	1	5	HR	\$ 86.77	\$ 433.85
Dump Truck	KW T800	5001	1	5	HR	\$ 101.72	\$ 508.60
Dump Truck	KW T800	1551	1	5	HR	\$ 101.72	\$ 508.60
Tool Truck	Chevy 3500	1522	1	5	HR	\$ 36.99	\$ 184.95
Pickup	Chevy 3/4ton 4x4	1706	1	5	HR	\$ 27.70	\$ 138.50
Pickup	Chevy 1/2ton 4x4	1746	1	5	HR	\$ 19.74	\$ 98.70
Backhoe	Case 590 Super M	1620	1	5	HR	\$ 49.67	\$ 248.35
Excavator	Takeuchi TB135	1698	1	5	HR	\$ 16.31	\$ 81.55
							\$ 5,005.10

MATERIALS

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

SUBCONTRACTOR

Sub Name	Invoice #	Total
		\$ -
		\$ -

TOTALS

		Subtotal Cost
		\$ 8,345.60
bonding		\$ -
insurance		\$ -
total		\$ 8,345.60





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

ORIGINAL

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
TOTAL AMOUNT FOR CHANGE ORDER NO. 4			\$69,000.00

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.

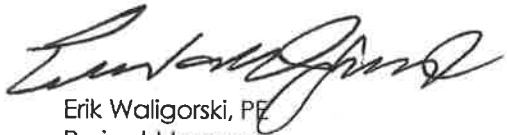
All work done under this Change Order shall be subject to the Provisions of the original Contract as if included therein.

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

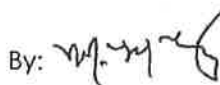
cc: Ken Van Den Bergh, Ken Haines
Mike Hanis, file

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

By: 

Title: Gen Mgr

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

By: 

Title: Project Manager



Puget Sound Energy, Inc.
PO Box 97034
Bellevue, WA 98009-9734
www.pse.com

RECEIVED
NOV - 4 2015
SOOS CREEK
WATER & SEWER DISTRICT

November 2, 2015
Soos Creek Water & Sewer District
P.O. Box 58039
Renton, WA 98058-1039

PSE Claim Number: 6000002144
Date of Claim: September 16, 2015
Location of Claim: 17032 SE Wax Road
Covington, WA 98042

Dear Soos Creek Water & Sewer District:

This will acknowledge receipt of your claim which arrived in our Claims Office on October 27, 2015. Thank you for your patience while this matter was reviewed.

We have completed our investigation into this incident and have determined that Puget Sound Energy complied with the rules of RCW 19.122.030 and thus cannot be held liable for any damages or losses as a result of this incident.

According to RCW 19.122.030 Section 3 subsection a states, a facility operator must, with respect to the facility operator's locatable underground facilities, provide the excavator with reasonable accurate information by marking their location which was completed prior to any excavation at or near this location by Frank Coluccio Construction prior to September 16, 2015.

Based on this information, we cannot find any negligence on the behalf of Puget Sound Energy and must respectfully deny any and all claims related to this incident.

Should anyone have any further questions, please feel free to contact me at my business number or e-mail between the hours of 07:00 AM and 03:30 PM PST, Monday through Friday. Thank you.

Sincerely,

George Molina
Senior Claims Agent
Puget Sound Energy Claims
(253) 395-6824
george.molina@pse.com


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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🌱 Please consider the environment before printing this email.

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 31st.

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



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♻️ Please consider the environment before printing this email.

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.