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Arizona Corporation Commission

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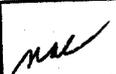
TO: THE COMMISSION

FROM: Pipeline Safety

DEC 07 2001

AZ CORP COMMISSION
DOCUMENT CONTROL

DATE: December 7, 2001

DOCKETED BY 

RE: UNDERGROUND FACILITIES VIOLATIONS - AUTHORITY TO FILE COMPLAINTS IN MARICOPA COUNTY JUSTICE COURTS AGAINST ENTITIES IN VIOLATION OF UNDERGROUND FACILITIES LAWS UNDER A.R.S. §§ 40-360.21 to 40-360.32 (DOCKET NO. RG-00000A-01-0951).

These matters come before the Arizona Corporation Commission ("Commission") in order to seek approval of filing Justice Court complaints against Desert Mountain Plumbing, Inc. ("Desert Mountain") and Fine Line Directional Boring, Inc., ("Fine Line") for violations of the Arizona Underground Facilities Laws under A.R.S. §§ 40-360.21 to 40-360.32.

The Commission has the authority to file complaints in Justice and/or Superior Courts under the Arizona Underground Facilities Laws. These complaints would be filed in East Phoenix I Justice Court and pursued by the Office of Pipeline Safety ("Pipeline Safety") and represented by the Legal Division. These matters would be litigated in Justice or Superior Court, rather than before the Commission. Pipeline Safety is requesting they be filed in East Phoenix No. 1 Justice Court in accordance with Article VI, Section 32.C of the Arizona Constitution and A.R.S. § 22-202. In both cases, Pipeline Safety will be seeking the maximum penalty of five thousand dollars against each entity.

Pipeline Safety attempted to negotiate resolutions in both cases prior to seeking approval from this Commission to file complaints in Justice Court. The offers made to both Fine Line and Desert Mountain, in order to settle each case, was for each entity to pay a fine as provided by statute. Neither party chose to pay this fine and accept Pipeline Safety's offer to settle prior to pursuing court action. For that reason, Pipeline Safety is left with no other option, but to initiate court action at this time. Pipeline Safety believes that it is in the public interest to pursue these claims and seek a civil penalty in accordance with Arizona Revised Statutes.

FACTS

1. Fine Line Directional Boring, Inc.

On August 17, 2001, Fine Line personnel were excavating (horizontal boring) across Broadway Road along Center Street in Mesa, Arizona. The facility, a fiber-optic conduit system owned and operated by Qwest Communications, Inc., had been properly located and marked as required by A.R.S. § 40-360.22(B). Fine Line failed to uncover the facility while conducting an excavation operation as required by A.R.S. § 40-360.21(2). Fine Line is in violation of A.R.S. § 40-360.23(A) by failing to excavate in a careful and prudent manner. To wit: Fine Line failed to

manually determine the exact location of the located and marked facility, therefore the facility was not uncovered and no means of support or protection was provided.

2. Desert Mountain Plumbing, Inc.

On October 18, 2001, Desert Mountain Plumbing personnel were excavating on Ocotillo Road near Hawes Road in Queen Creek, Arizona. Prior to, and while excavating (horizontal boring) north and south across Ocotillo Road, Desert Mountain Plumbing failed to determine the exact location of a 4-inch high pressure (HP) gas line main owned and operated by Southwest Gas Corporation. This 4-inch HP gas line main had been previously marked in accordance with Arizona law § 40-360.22(B). Desert Mountain Plumbing is in violation of A.R.S. § 40-360.23(A) by failing to excavate in a careful and prudent manner. To wit: Desert Mountain Plumbing failed to manually determine the exact location of the located and marked facility, therefore the facility was not uncovered and no means of support or protection was provided.

LEGAL AUTHORITY

Both, Desert Mountain Plumbing and Fine Line are "persons" as defined under A.R.S. § 40-360.21(11) and were conducting excavations as defined under A.R.S. § 40-360.21(4). The East Phoenix No. 1 Justice Court has jurisdiction and venue to hear the complaints under Article VI, § 32.C of the Arizona Constitution and A.R.S. § 22-202 respectively. Under A.R.S. § 40-360.28(A) the state can receive a civil penalty up to five thousand dollars per each violation, which is to be deposited in the state general fund.

CONCLUSION

The Office of Pipeline Safety is asking this Commission to vote to approve formal action in the Arizona court system by filing the attached complaints in East Phoenix No. 1 Justice Court. The Office of Pipeline Safety is the appropriate state agency with the oversight and expertise to pursue these claims on behalf of the Commission and the State of Arizona. Office of Pipeline Safety believes it is the public interest to initiate formal civil actions against both Desert Mountain and Fine Line for violations of the Underground Facilities Laws.



Ernest Johnson
Director
Utilities Division

EGJ:TF:ev/JDG

Originator: Terry Fronterhouse

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4 Arizona Corporation Commission
5 Legal Division
6 1200 West Washington
7 Phoenix, Arizona 85007

8 East Phoenix No. 1 Justice Court of Maricopa County

9 ARIZONA CORPORATION COMMISSION,) Case No.: CV
10 ex rel STATE OF ARIZONA,) Complaint
11 Plaintiff,)
12 vs.)
13 DESERT MOUNTAIN PLUMBING, L.L.C.,)
14 Defendant)

15 For its complaint against Desert Mountain Plumbing, L.L.C. ("Defendant"), the Arizona
16 Corporation Commission ("Commission") alleges:

17 **I. PARTIES, JURISDICTION AND VENUE**

18 1. The Commission is an agency of the State of Arizona created under Article XV of
19 the Arizona Constitution with its principal office in Phoenix, Arizona.

20 2. Desert Mountain Plumbing, Inc. is a "person" as defined under A.R.S. § 40-
21 360.21(11).

22 3. This Court has jurisdiction over this matter pursuant to Article VI § 32.C of the
23 Arizona Constitution as the amount in controversy does not exceed ten thousand dollars

24 4. Venue is proper in this Court pursuant to A.R.S. § 22-202 as this action is brought
25 on behalf of the State of Arizona in the county where the seat of government and the
26 Commission are located.

27 **II. CLAIM FOR RELIEF**

28 (Failing to Excavate Carefully and Prudently)

1 Jason D. Gellman
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4 Arizona Corporation Commission
5 Legal Division
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7 Phoenix, Arizona 85007

8 East Phoenix No. 1 Justice Court of Maricopa County

9 ARIZONA CORPORATION COMMISSION,) Case No.: CV
10 ex rel STATE OF ARIZONA,) Complaint
11 Plaintiff,)
12 vs.)
13 FINE LINE DIRECTIONAL BORING, INC.)
14 Defendant)

15 For its complaint against Fine Line Directional Boring, Inc. ("Defendant"), the Arizona
16 Corporation Commission ("Commission") alleges:

17 **I. PARTIES, JURISDICTION AND VENUE**

18 1. State of Arizona created under Article XV of the Arizona Constitution with its
19 principal office in Phoenix, Arizona.

20 2. Fine Line Directional Boring, Inc., is a "person" as defined under A.R.S § 40-
21 360.21(11). Defendant had been subcontracted by Telestar Cable, an L.L.C. listed in the State of
22 Arizona, to conduct boring operations. Defendant was formed in the State of Arkansas.

23 3. This Court has jurisdiction over this matter pursuant to Article VI § 32.C of the
24 Arizona Constitution as the amount in controversy does not exceed ten thousand dollars

25 4. Venue is proper in this Court pursuant to A.R.S. § 22-202 as this action is brought
26 on behalf of the State of Arizona in the county where the seat of government and the
27 Commission are located.

28 **II. CLAIM FOR RELIEF**

(Failing to Excavate Carefully and Prudently)

5. On or about August 17, 2001 at or near Broadway Road and Center Street in Mesa, Arizona, Defendant was boring north and south across Broadway Road without keeping exposed a fiber-optic conduit system operated by Qwest Corporation ("Qwest"). This fiber-optic conduit system runs east to west under Center Street. Qwest had the fiber-optic conduit system properly marked in accordance with Arizona law.

6. Defendant failed to manually determine the exact location of the located and marked facility, therefore the facility was not uncovered and no means of support or protection was provided.

7. By failing to expose, support, and protect Qwest's fiber-optic conduit system, Defendant failed to excavate in a careful and prudent manner in violation of A.R.S. § 40-360.21, 40-360.23 et. seq.

WHEREFORE, Plaintiff prays for judgement against Defendant as follows:

1. The imposition of a civil penalty in the sum of five thousand dollars pursuant to A.R.S. § 40-360.28(A) (Supp. 1999);
2. The costs of the action, including reasonable attorney's fees pursuant to A.R.S § 40-360.27;
3. Such other relief as the Court deems just and proper.

Dated this 15th day of November, 2001

Jason D. Gellman
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Phoenix, Arizona 85007