



New Legal Challenge to the “One-Call” Law - Arbitrator’s Decision Noteworthy

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An arbitrator ruled in favor of a contractor who filed a claim against a city for not providing locate paint marks to denote the location of a service lateral pipe that was damaged when the contractor installed a new waterline in the area.

Scoccolo Construction, Inc. [SCI] called the “One-Call” locate number three days prior to performing excavation for a new waterline in the City of Tumwater, WA. The City provided locate marks for the sewer main, but failed to provide locate marks for any sewer laterals in the area. SCI performed their work without incident. Several weeks later, the adjacent property owner complained to SCI about their sewer pipe backing up. SCI investigated the problem and discovered the side sewer serving this property had been unknowingly damaged when the waterline trenching work was performed. SCI corrected the problem at its own expense.

One month later, SCI called the “One-Call” locate number again in order to install a fire hydrant in this same general area. This time SCI also contacted the City utility department directly and requested their assistance in locating any side sewers in the area. The City indicated that they had no knowledge of any sewer laterals in this area and gave SCI the “all-clear” to excavate and complete their work. A few weeks later, the same property owner complained to SCI about their sewer backing up again. A camera investigation determined that the side sewer serving this business meandered “like a snake.” The blockage was identified out in the middle of the newly paved highway intersection. This time the repairs would be costly to complete. SCI informed the City of the problem and provided them with their proposed date of repairs. SCI also requested compensation from the City for the cost of performing the repairs since the City failed to provide any paint marks indicating the presence of a service laterals in this area. The City denied SCI’s request stating that they had no obligation to provide paint marks for service laterals. The City believed they only had to provide paint marks for the sewer mains. SCI filed a claim against the City for the cost to perform all the repair work.

The City’s insurance company denied the claim, citing a new legal argument. The City’s revised legal defense was that the City didn’t own the sewer laterals, therefore they didn’t have an obligation to mark their location. SCI filed a lawsuit in Thurston County Superior Court and requested the case be arbitrated. The case was heard before an arbitrator with an extensive construction background.

The City argued that they only owned the sewer mainline. Each private property owner actually owned his or her own service lateral. According to the “One-Call” law, the City only had to mark buried facilities that it owned. Since it did not own the service laterals, it had no obligation to provide paint marks denoting their location. SCI argued that position would require every property owner in the City to subscribe to the “One-Call” service. Since none of them subscribed, they are all breaking the law and should be liable for the costs to repair any damage to their facilities. The City clearly had the best information available and had taken the role of maintaining location maps and maintenance data for the sewer system. The home and business owners had no idea where their service laterals were buried. The City requires permits be issued and “As-Built” drawings be provided to the City upon completion

of any additions or modifications to the City's sanitary sewer system. The City ultimately possesses this knowledge, or at least is in the best position to manage the information and provide it to excavators through the "One-Call" system. Pushing this obligation back to the private property owners is not the intent of the "One-Call" statute. The arbitrator agreed with SCI and awarded them all of their costs to perform the repairs along with all of their attorney fees. Many other public agencies have taken the position that they don't have to mark service laterals. This decision may help clarify this issue. While the "One-Call" law includes an exception clause for not marking service laterals, the exception clause is conditioned upon the presence of physical features that indicate the location of the lateral to the excavator. This ruling may be one more tool you could rely upon next time you find yourself repairing a service lateral that was not marked.