

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

BIG D'S EXCAVATION, LLC, D/B/A
BIG D'S CONSTRUCTION OF TRI-
CITIES,

in the amount of \$1,000

DOCKET DG-210548

ORDER 01

ORDER DENYING CONTEST OF
VIOLATION

BACKGROUND

- 1 On September 13, 2021, the Washington Utilities and Transportation Commission (Commission) issued a Penalty Assessment against Big D's Excavation, LLC, d/b/a Big D's Construction of Tri-Cities (Big D's or Company) in the amount of \$1,000, alleging one violation of RCW 19.122.055(1)(a) for failing to notify a one-number locator service prior to performing an excavation and subsequently causing damage to an underground gas facility.
- 2 On September 21, 2021, Big D's responded to the Penalty Assessment, contesting the violation. Big D's did not specify whether it was requesting that the Commission make a determination based on the information provided or hold a hearing. Big D's included the following explanation with its request: "See attached locate ticket that covers area in question. Old abandoned line." The Company attached a locate ticket for the date the damage occurred for the location "ROW to ROW along Rd 52 from the Southern Intersection of Sylvester and Road 52 to the intersection of Road 52 and Whitetail Ct."
- 3 On October 27, 2021, Commission staff (Staff) filed a response recommending the Commission deny the Company's contest of the violation. In its response, Staff notes that Big D's has not introduced any new information. Staff explained that the information that Big D's provided with its application 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)." Further, Staff states that Big D's claim that the damaged facility was an "old abandoned line" conflicts with the facility owner's report that it was a newly installed, not yet activated line. Staff states that it reached out to Big D's to request additional information from the Company to support its

claim of the damage falling within the scope of the ticket, but did not receive a response.

- 4 Staff further explained that Big D's has previously received a warning letter from the Commission, which included information about the requirements of RCW 19.122, as well as a prior \$1,000 penalty related to violations for excavating without first obtaining utility locates. Because the Company has received prior technical assistance and has been previously penalized, Staff does not support any mitigation of the penalty.

DISCUSSION AND DECISION

- 5 RCW 19.122.030(1)(a) requires excavators to "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." Further, an excavator is prohibited from excavating "until all known facility operators have marked or provided information regarding underground facilities."¹ Excavators who violate these provisions are subject to penalties of up to \$10,000 per violation.²
- 6 As a preliminary matter, because the Company did not specify whether it was requesting a determination based upon the information provided or requesting a hearing, the Commission will base its decision on the information provided.
- 7 The Commission denies the Company's contest of the violations. The disputed facts are those that were fully considered in the original investigation and the Company has provided no new information. While the Company provided a valid locate claim for the date of the damage, it provided no explanation or challenge to Staff's determination that the damage was 100 feet outside the area covered by the locate ticket. Further, whether the damaged facility was an "old abandoned line" or a newly installed facility, and whether or not it was actively in use, is irrelevant in determining fault under RCW 19.122.
- 8 We will, however, construe the Company's submission as a request for mitigation. The Commission considers several factors when entertaining a request for mitigation, including whether the company introduces new information that may not have been considered in setting the assessed penalty amount, or explains other circumstances that

¹ RCW 19.122.030(5).

² RCW 19.122.055(1)(a).

convince the Commission that a lesser penalty will be equally or more effective in ensuring the company's compliance.³

- 9 Here, the Company did not introduce any new information that would warrant mitigation of the penalty. Companies that dig without first obtaining an underground utility locate or dig outside the boundaries covered by a locate ticket, put their employees, the public, and the facility operator's employees at risk. The damage incident at issue could have resulted in a fire or an explosion. It is the Company's responsibility to secure a utility locate prior to performing an excavation, and it may not extrapolate from an existing ticket to surrounding areas not covered by the locate. Accordingly, we find that the Commission properly penalized Big D's for damaging a gas pipeline and conclude that the Company's request for mitigation should be denied.

ORDER

THE COMMISSION ORDERS THAT:

- 10 (1) Big D's Excavation, LLC's contest of the violation is DENIED.
- 11 (2) The \$1,000 penalty is due and payable no later than November 29, 2021.

DATED at Olympia, Washington, and effective November 15, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AMANDA MAXWELL
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for Commission review of this order no later than 14 days after the date the decision is posted on the Commission's website.

³ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013) at ¶19.

