

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

A AND H LANDSCAPING

in the amount of \$1,000

DOCKET DG-152252

ORDER 01

ORDER GRANTING MITIGATION
TO \$500

BACKGROUND

- 1 On December 14, 2015, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment DG-152252 against A and H Landscaping (A and H or Company) in the amount of \$1,000, alleging one violation of RCW 19.122.030(1)(a) for failing to request a dig ticket prior to performing an excavation on one occasion.
- 2 On December 29, 2015, A and H filed an application for mitigation, requesting a decision based on the written information provided. The Company admits the violation but requests a reduced penalty because this is its first violation in many years of operation, and the penalty would create a financial hardship during the Company's slow season.
- 3 On January 28, 2016, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation and assess a reduced penalty of \$500. Staff supports a reduced penalty because this is the Company's first violation; the Company was receptive to Staff's technical assistance; the Company provided assurances that it has changed its policy to ensure locates are requested going forward; and the Company has placed 26 locate requests without incident since the violation occurred.

DISCUSSION AND DECISION

- 4 RCW 19.122.055(1)(a) provides, in part, that any excavator who fails to notify a one-number locator service and causes damage to a hazardous liquid or gas facility is subject to a civil penalty of up to \$10,000 for each violation. Here, the Commission assessed a reduced penalty of \$1,000 because this was the Company's first violation.

- 5 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 convince the Commission that a lesser penalty will be equally or more effective in ensuring the company's compliance.¹ In this instance, A and H explained that the penalty would create a financial hardship because its business is slow during winter.
- 6 The Commission's goal is to obtain compliance, not create an insurmountable financial burden for a small business. Accordingly, we find that a reduced penalty of \$500 – which is significant, yet not unduly punitive – is appropriate for the Company's first violation. In addition, because the Company has demonstrated recent compliance by successfully placing 26 underground locate requests, the violation is not likely to recur.

ORDER

THE COMMISSION ORDERS:

- 7 (1) A and H Landscaping's request for mitigation is GRANTED, in part, and the penalty is reduced to \$500.
- 8 (2) The \$500 penalty is due and payable no later than February 18, 2016.
- 9 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective February 8, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
Executive Director and Secretary

¹ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013) at ¶19.

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.