



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION
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August 27, 2019

Mark L. Johnson, Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

RE: *Washington Utilities and Transportation Commission v. Tropical Dew LLC*
Commission Staff's Response to Application for Mitigation of Penalties
Docket DG-190628

Dear Mr. Johnson:

On July 31, 2019, the Washington Utilities and Transportation Commission (Commission) issued a penalty against Tropical Dew LLC (Tropical Dew or Company) as follows:

- **\$5,000 penalty for one violation of RCW 19.122.030(2) that occurred on January 22, 2019.**

The violation was for a damage incident to an underground natural gas facility on January 22, 2019, that occurred because Tropical Dew failed to provide notice of its planned excavation to facility operators through the one-call utility locator service prior to installing an irrigation system.

Tropical Dew was previously assessed a \$1,000 penalty on March 21, 2019, in Docket DG-190064 for causing damage to an underground natural gas service on September 6, 2018, without a valid dig ticket. The Commission offered to suspend the penalty amount for 12 months on the condition that Tropical Dew incur no additional dig law violations within 12 months. On April 1, 2019, Tropical Dew accepted the conditions and the Commission suspended the \$1,000 penalty for 12 months on the condition that Tropical Dew incur no additional dig law violations before March 21, 2020. Dig Safe training was not required as part of the conditions because during the investigation Tropical Dew indicated to staff that the owner did not speak English fluently, and training classes are not currently offered in non-English languages.

In its letter to the Commission requesting mitigation, Tropical Dew admitted the violation and requested mitigation of the \$5,000 penalty, stating that it believed the previous penalty included the January 22, 2019 damage incident.

Staff's investigation of the September 2018 damage incident, which resulted in the \$1,000 penalty, did not consider the January 22, 2019 damage incident. The report of the damage incident on January 22, 2019 was

not submitted to the damage reporting system by Cascade Natural Gas Corporation (CNGC) until March 5, 2019, which is the same day that Staff concluded and submitted the September 2018 damage incident investigation for review. UTC staff was unaware of the January 22, 2019 damage incident during the course of the investigation or before the penalty was assessed, and therefore not addressed with the Company, in the investigation, or in the penalty order. Furthermore, in the contact Staff had with Tropical Dew during the September 2018 damage incident investigation, no mention of the January 22, 2019 damage incident was made by Tropical Dew. Because this damage incident occurred between the first damage incident and first penalty assessment, the suspended \$1,000 penalty did not become due and payable, and remains suspended until March 21, 2020.

In regards to the \$5,000 penalty assessed for the January 22, 2019 damage incident, Staff determined the penalty amount primarily by Commission policy regarding multiple, separate violations. Staff also considered information received from CNGC regarding the damage incident that indicated Tropical Dew workers did not notify CNGC after the damage occurred. The damage was reported by a concerned contractor on an adjacent property, who smelled gas after Tropical Dew had begun digging, and reported it to CNGC. CNGC arrived and discovered damage to the gas line directly underneath an irrigation line that Tropical Dew had just installed. CNGC's report states that Tropical Dew denied causing the damage, and stated that it smelled gas before it started excavation at the jobsite. It is Staff's belief that the penalty amount of \$5,000 is appropriate for this damage incident.

Tropical Dew is a small general contracting and landscaping business that reports to employ 4-6 workers.

Staff recommends that the Commission deny Tropical Dew's application for mitigation of the \$5,000 penalty assessed on July 31, 2019, and recommends that the Company's suspended penalty of \$1,000 assessed on March 21, 2019 and associated conditions remain unchanged and in effect as ordered.

If you have any questions, please contact Steve Davidson, Compliance Investigator, Pipeline Safety and Damage Prevention, at (360) 664-1321, or by email at steve.davidson@utc.wa.gov.

Sincerely,

Sean C. Mayo, Director
Pipeline Safety