

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against RODARTE CONSTRUCTION, INC., in the amount of \$2,500	DOCKET DG-240061 ORDER 01 GRANTING MITIGATION, IN PART; IMPOSING PENALTY OF \$1,500
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BACKGROUND

- 1 On February 12, 2024, the Washington Utilities and Transportation Commission (Commission) issued a penalty assessment (Penalty Assessment) in the amount of \$2,500 against Rodarte Construction, Inc. (Rodarte or Company) alleging one violation of Revised Code of Washington (RCW) 19.122.055(1)(a).
- 2 On March 4, 2024, Rodarte filed an application for mitigation, admitting the violation and requesting a decision based on the written information provided. In its request, the Company stated that it made a good faith effort to comply with the location request requirements and that the locate was cut short due to a clerical oversight within the One-Call system.
- 3 On March 19, 2024, Commission staff (Staff) filed a response recommending the Commission grant the Company’s request for mitigation, in part. Staff states that it found that the clerical error was made by Rodarte, not the One-Call system, but that it was an unintentional oversight and that Rodarte made a good faith effort to cooperate with the facility owner and locator for the large project dig site. Accordingly, Staff recommends the Commission mitigate the penalty to \$1,500.

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 an underground gas facility is subject to civil penalty of up to \$10,000 for each violation. Here, the Commission imposed a \$2,500 penalty for one violation of RCW 19.122.055(1)(a).

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

6 Staff recommends the Commission grant mitigation to \$1,500. We agree with Staff's recommendation. The Commission's goal in any enforcement action is to obtain compliance. The Company has provided sufficient evidence that it continues to prioritize public safety, and it continues to make a dedicated effort to comply with the requirements of RCW 19.122. In this case, the damage was the direct result of an inaccurate locate request, but we believe that the error was a clerical oversight in an otherwise compliant operation. The damage occurred while the Company's excavating employees were operating under the reasonable belief that the locate was accurate and complete. Accordingly, the Commission mitigates the penalty to \$1,500.

ORDER

THE COMMISSION ORDERS:

- 7 (1) Rodarte Construction, Inc.'s request for mitigation is GRANTED, in part, and the penalty is reduced to \$1,500.
- 8 (2) Rodarte Construction, Inc. must pay the \$1,500 penalty and submit the form attached hereto within 14 days of the effective date of this Order.

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 Lacey, Washington, and effective March 26, 2024.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ JEFF KILLIP

Executive Director and Secretary

By: Kathy Hunter, Director of Transportation Safety

Executive Director's Designee

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.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
RESPONSE TO COMMISSION FINAL ORDER
DG-240061 Investigation #8850

PLEASE NOTE: You must complete and sign this document and send it to the Commission within 14 days after you receive the Final Order.

I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements:

- [] 1. **Payment of penalty;** I admit that the violation occurred and enclose \$1,500 payment of the penalty.

Please indicate your selection on the enclosed form and submit it electronically through the Commission's web portal at <https://efiling.utc.wa.gov/Form> **within FOURTEEN (14) days** after you receive this Final Order. If you are unable to use the web portal, you may submit it via email to records@utc.wa.gov. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, PO Box 47250, Olympia, Washington 98504-7250.

If you wish to make your payment online, please use this link: [Make a Payment Now \(wa.gov\)](#).²

If you do not act within 14 days, the Commission may refer this matter to the Office of the Attorney General for collection.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: _____ [Month/Day/Year], at _____ [City, State]

Name of Respondent (Company) – please print

Signature

RCW 9A.72.020 "Perjury in the first degree."

- (1) A person is guilty of perjury in the first degree if in any official proceeding he or she makes a materially false statement which he or she knows to be false under an oath required or authorized by law.
- (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his or her statement was not material is not a defense to a prosecution under this section.
- (3) Perjury in the first degree is a class B felony.

² <https://www.utc.wa.gov/documents-and-proceedings/online-payments/make-payment-now>.