

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

NATE’S PLUMBING, INC.

in the amount of \$1,000

DOCKET DG-160907

ORDER 01

ORDER DENYING REQUEST FOR
HEARING; DENYING CONTEST OF
VIOLATION; DENYING MITIGATION

BACKGROUND

- 1 On August 12, 2016, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment DG-160907 against Nate’s Plumbing, Inc. (Nate’s Plumbing or Company) in the amount of \$1,000, alleging one violation of RCW 19.122.030(1)(a) for failing to request a utility locate prior to performing an excavation on October 8, 2015.
- 2 On August 31, 2016, Nate’s Plumbing filed an application for mitigation, contesting the violation and requesting a hearing. Nate’s Plumbing included the following explanation with its request: “Waterways plumbing obtained a locate ... and presented that to Nate’s Plumbing for this incident. Nate’s Plumbing was a subcontractor to Waterways at the time of excavation. Nate’s Plumbing did damage the natural gas line due to the unusual configuration of the line which was in a Z pattern, instead of a sloping grade.”
- 3 On September 27, 2016, Commission staff (Staff) filed a response recommending the Commission deny the Company’s request for hearing. In its response, Staff notes that Nate’s Plumbing has not introduced any new information that requires consideration and resolution in hearing. Staff further explained that Nate’s Plumbing received a warning letter from the Commission in October 2013 related to a previous violation for performing an excavation without first obtaining a utility locate, which included information about the requirements of RCW 19.122 and potential penalties for violations. Because the Company has received prior technical assistance, Staff does not support mitigation of the penalty.

DISCUSSION AND DECISION

- 4 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

5 As a preliminary matter, we deny the Company’s request for a hearing. The Commission’s penalty assessment advised the Company that a request for hearing will only be granted if material issues of law or fact require consideration of evidence and resolution in hearing. Here, no issues of law or fact are in dispute. The Company admits that it did not obtain a utility locate prior to performing an excavation, instead relying on a utility locate obtained by a third party. The facts, therefore, are undisputed, and the law is clear. Accordingly, the Company’s request for a hearing is denied.

6 The Commission also denies the Company’s contest of the violations. The undisputed facts demonstrate that the Company failed to obtain a utility locate prior to performing an excavation on October 8, 2015. The Company has thus violated the law.

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

8 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 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; it may not rely on a utility locate obtained by a third party. Accordingly, we find that the Commission properly penalized Nate’s Plumbing for damaging a gas pipeline, and conclude that the Company’s request for mitigation should be denied.

¹ RCW 19.122.030(5).

² RCW 19.122.055(1)(a).

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

ORDER

THE COMMISSION ORDERS THAT:

- 9 (1) Nate's Plumbing, Inc.'s request for mitigation is DENIED.
- 10 (2) The \$1,000 penalty is due and payable no later than October 14, 2016.

DATED at Olympia, Washington, and effective September 30, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
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.