

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Penalty Assessment Against WICKMAN CONSTRUCTION LLC In the amount of \$1,000	DOCKET DG-230687 ORDER 01 DENYING MITIGATION
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BACKGROUND

- 1 On September 13, 2023, the Washington Utilities and Transportation Commission (Commission) issued a Penalty Assessment DG-230687 against Wickman Construction, LLC (Wickman Construction 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 and causing damage to an underground hazardous liquid or gas underground facility on April 11, 2023. The Penalty Assessment offered Wickman Construction the opportunity to suspend \$800 of the penalty on the condition that: (1) Company field crew and supervisors successfully complete National Utility Contractors Association (NUCA) Dig Safe Training within 90 days of service of the Penalty Assessment, and (2) the Company incur no additional dig law violations within 12 months.
- 2 On September 20, 2023, Wickman Construction filed a response requesting mitigation of the penalty. To support its request, the Company stated that it “only had two other incidents since 2006 and has a great track record for keeping it’s locate tickets updated.”
- 3 On September 25, 2023, Commission staff (Staff) filed a response letter in this Docket recommending the Commission deny the Company’s contest of the violation. In its letter Staff states that based on the results of its investigation, Staff believes the incident to be due to negligence rather than not knowing Dig Law requirements.

DISCUSSION AND DECISION

- 4 RCW 19.122.055(1)(a) provides that any excavator who fails to notify a one-number locator service and causes damage to a hazardous liquid or gas underground facility is

subject to a civil penalty.” Excavators who violate these provisions are subject to penalties of up to \$10,000 for each violation.¹ Here the Commission assessed a penalty of \$1,000 for one violation.

- 5 The Commission considers several factors when evaluating a request for mitigation, including whether the company demonstrates that the facts were incorrect or do not support the penalty assessment, whether the company demonstrates that information or factors exist that the commission may not have considered, and whether the company explains other circumstances that convince the Commission that this violation did not occur or that a lesser penalty will be equally effective.²
- 6 Here, the Company did not introduce any new information that would warrant mitigating the penalty. Wickman had an expired locate, which it tried to remedy on the day of the excavation without the requisite 2-day minimum notice.³ Additionally, since records indicate that the Company sought 143 locate tickets in the past 12 months, we find that the Company is aware of the requirements and acted negligently in this instance by failing to acquire a valid locate ticket. 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 location prior to performing an excavation. Accordingly, we find that the Commission properly penalized Wickman for damaging a pipeline and conclude that the Company’s request for mitigation should be denied.
- 7 Therefore, we find that Staff’s recommendation to impose the full \$1,000 penalty is appropriate, and we conclude that the company’s request for mitigation should be denied. However, the Commission’s interest in any enforcement action is ensuring future compliance. Accordingly, we reiterate the offer in the Penalty Assessment to suspend an \$800 portion of the penalty subject to conditions. Wickman must therefore take one of the following actions within 10 days of the effective date of this Order.

- Pay the \$1,000 penalty.

¹ RCW 19.122.055(1)(a).

² Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013) at ¶19

³ See RCW 19.122.055(1)(a)

- Pay \$200 of the penalty amount and notify the Commission that the Company accepts the Commission's offer to suspend and ultimately waive, the remaining \$800 portion of the penalty subject to conditions that (1) Wickman supervisors and field crew attend NUCA Dig Safe Training within 90 days of the effective date of this order and submit documentation of attendance within five days of completion, and (2) Wickman incurs no additional violations of RCW 19.122 within 12 months of the effective date of this Order.

ORDER

THE COMMISSION ORDERS THAT:

- 8 (1) Wickman Construction, LLC's request for Mitigation is DENIED.
- 9 (2) Wickman Construction, LLC, must either pay the \$1,000 penalty as set forth in paragraph seven of this Order or take the alternative action described in paragraph 8 of this Order.

DATED at Lacey, Washington, and effective October 30, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

KATHY HUNTER
Acting 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.