

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

DDB LLC

in the amount of \$5,000

DOCKET DG-210209

ORDER 01

DENYING MITIGATION;
IMPOSING AND SUSPENDING
PENALTY

BACKGROUND

- 1 On May 21, 2021, the Washington Utilities and Transportation Commission (Commission) issued a Penalty Assessment (Penalty Assessment) against DDB LLC (DDB or Company) in the amount of \$5,000, alleging one violation of Revised Code of Washington (RCW) 19.122.055 for failing to provide the required notice to a one-number locator service before excavating and subsequently causing damage to an underground natural gas facility.
- 2 On June 23, 2021, DDB filed an application for mitigation, admitting the violation and requesting a decision based on the written information provided. In its request, the Company states that the ticket was called in “wrong” by a supervisor because “it was his personal home.”
- 3 On June 25, 2021, Staff filed a response recommending the Commission deny the Company’s request for mitigation but suggesting that the Commission suspend \$2,500 of the penalty for 12 months on the conditions that: (a) DDB Supervisors and field crew complete National Utility Contractors Association (NUCA) Dig Safe Training within 90 days; and (b) DDB commits no additional dig law violations within those 12 months. Staff explains that it is not convinced the Company has shown that it will prioritize dig safety based on the Company’s history of violations. Staff further stated that regardless of who called in the locate request, there was not a valid ticket for the site at the time of the damage incident. A previous ticket had expired and second locate request was called in the day following the damage incident.

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 has assessed a reduced penalty of \$5,000 for one repeat 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

6 Here, Staff recommends the Commission deny mitigation but suspend half of the \$5,000 penalty, subject to conditions. We agree with Staff's recommendation. DDB failed to 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. However, the Commission believes that Company employees' commitment to dig safety would benefit from NUCA Dig Safe Training and a suspended portion of the penalty will provide incentive to attend training as well as additional incentive to comply with the requirements of RCW 19.122. Accordingly, the Commission assesses a \$5,000 penalty against DDB and suspends \$2,500 of the penalty for a period of 12 months from the date of this Order, at which point it will be waived, subject to the conditions that (a) DDB supervisors and field crew complete NUCA Dig Safe Training within 90 days of this Order; (b) DDB provides documentation of attendance to the Commission within five days of completing training; and (c) DDB incurs no additional dig law violations within 12 months.

ORDER

THE COMMISSION ORDERS:

- 7 (1) DDB LLC's request for mitigation is DENIED.
- 8 (2) The Commission assesses a \$5,000 penalty and suspends \$2,500 of the penalty for 12 months, subject to the conditions listed in paragraph 6.

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

- 9 (3) DDB LLC must either pay the \$2,500 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement within 10 days of the effective date of this Order.
- 10 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 July 16, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



MARK L. JOHNSON
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.