

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

<p>In the Matter of a Penalty Assessment Against</p> <p>J&J CONSTRUCTION AND LANDSCAPING LLC</p> <p>in the amount of \$1,000</p>	<p>DOCKET DG-240907</p> <p>ORDER 01</p> <p>DENYING MITIGATION</p>
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BACKGROUND

- 1 On December 5, 2024, the Washington Utilities and Transportation Commission (Commission) issued a Penalty Assessment against J&J Construction and Landscaping LLC (J&J Construction or Company) in the amount of \$1,000 for one violation of Revised Code of Washington (RCW) 19.122.055(1)(a) 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 January 8, 2025, J&J Construction filed an application for mitigation, admitting the violation and requesting a decision based on the written information provided. In its request, the Company shared that it was digging very shallow and that the Penalty Assessment was its first offense in seven years of doing business.
- 3 On January 10, 2025, Commission staff (Staff) filed a response recommending the Commission deny the Company’s request for mitigation. Staff explained that RCW 19.122 is clear in its requirements that excavators are responsible for notifying 811 before excavating and authorizes the Commission to assess a penalty up to \$10,000 if an excavator fails to provide the required notice and causes damage to a natural gas or hazardous liquid underground facility, and the recommended \$1,000 penalty is typical for these circumstances. Staff also noted that while J&J Construction has not been penalized previously by the Commission, a Warning Letter was issued to the Company on December 19, 2017, for causing damage to a gas line as a result of not calling for a locate request, and there is no record of the Company completing Dig Safe training following the Warning Letter. Finally, Staff shared that it is a significant safety concern that the Company reburied the damaged line without notifying Puget Sound Energy (PSE). For all of these reasons, Staff believes the assessed penalty amount is appropriate.

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 a 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 We agree with Staff that mitigation is not appropriate in the circumstances presented here. When companies cause damage to gas pipelines, it poses serious safety concerns. Companies that dig without first obtaining an underground utility locate put their employees, the public, and the facility operator's employees at risk, and the damage incident at issue could have resulted in a fire or an explosion. Of additional concern is the fact that the Company reburied the damaged line without notifying PSE. For all of the reasons presented by Staff, we find that the Commission appropriately penalized J&J Construction for its violation and conclude that the Company's request for mitigation should be denied.

ORDER

THE COMMISSION ORDERS:

- 7 (1) J&J Construction and Landscaping LLC's request for mitigation is DENIED.
- 8 (2) The \$1,000 penalty is due and payable within 14 days of the effective date of this order. See the Response to Commission Final Order on the last page 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 January 21, 2025.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

JEFF KILLIP
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.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
RESPONSE TO ORDER 01 DENYING MITIGATION
DG-240907 Investigation # 8971

PLEASE NOTE: You must complete and sign this document and send it to the Commission within 14 days after you receive Order 01.

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, 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:
 Enclose \$1,000 in payment of the penalty.
OR Attest that I have paid the penalty in full through the Commission's payment portal.
2. **Accept conditions.** I admit that the violation occurred and enclose \$200 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$800 penalty amount subject to the following conditions:
- Company management and field crew responsible for excavation must complete Dig Safe training provided through NUCA within 90 days of service of the Commission Final Order; and
 - The Company must submit documentation of training completion to the Commission; and
 - The Company must not commit any further violations of RCW 19.122 within twelve (12) months of the date of the Commission Final Order.

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 TEN (10) 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 \(wa.gov\)](#).¹
If you do not act within 10 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 of Applicant

¹ <https://www.utc.wa.gov/documents-and-proceedings/online-payments/make-payment-now>.

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.