

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

GARY THAYER CONSTRUCTION,
LLC

in the amount of \$2,000

DOCKET DG-160166

ORDER 01

ORDER DENYING MITIGATION

BACKGROUND

- 1 On March 30, 2016, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment DG-160166 against Gary Thayer Construction, LLC (Thayer Construction or Company) in the amount of \$2,000, alleging two violations of RCW 19.122.030(1)(a) for failing to request a utility locate prior to performing excavations on July 1, 2014, and June 25, 2015.
- 2 On June 29, 2016, Thayer Construction filed an application for mitigation, admitting the violations and requesting a decision based on the written information provided. Thayer Construction did not provide any information related to the July 1, 2014, violation, but provided the following explanation for the June 25, 2015, violation: “At that time, I was working for JNG and doing their dirt work and utilities. I was told that locates had already been called in and the evidence was on the ground. Unfortunately, the locates were incorrect, by quite a large margin, as indicated in the penalty assessment document. Last June, I was unaware that, as the contractor, I myself had to call in for locates – even if the call had previously been made by the builder. Therefore, there is no record of a call from me, because I did not make one.”
- 3 On August 12, 2016, Commission staff (Staff) filed a response recommending the Commission deny the Company’s request for mitigation. In its response, Staff explained that Thayer Construction received a warning letter from the Commission about its 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.

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 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
- 6 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 incidents at issue could have resulted in a fire or an explosion. Thayer Construction should have obtained a utility locate regardless of whether it believed another entity had secured one on its behalf. Moreover, the Company’s explanation that it was not aware of its obligation to secure a locate prior to performing an excavation, is not credible in light of the fact that the Company had previously received technical assistance from Staff. We therefore find that a \$2,000 penalty for two violations of RCW 19.122.030(1)(a) is appropriate to deter repeat violations, and conclude that the Company’s request for mitigation should be denied.

ORDER

THE COMMISSION ORDERS THAT:

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.

- 7 (1) Thayer Construction Services, LLC's request for mitigation is DENIED.
- 8 (2) The \$2,000 penalty is due and payable no later than September 7, 2016.

DATED at Olympia, Washington, and effective August 24, 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.