

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

INFRASOURCE SERVICES, LLC,

in the amount of \$5,000

DOCKET DG-200433

ORDER 01

DENYING MITIGATION

BACKGROUND

- 1 On August 19, 2020, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment DG-200433 (Penalty Assessment) against InfraSource Services, LLC, (InfraSource 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 September 10, 2020, InfraSource filed an application for mitigation, admitting the violation and requesting a decision based on the written information provided. In its request, the Company states “this incident was not the result of willful or negligent neglect for the dictates of RCW 19.122.030 but rather an honest mistake.” The Company claims that it obtained a dig ticket, but that the ticket expired prior to excavation. InfraSource also protested its lack of opportunity to participate in Commission staff’s (Staff) investigation. The Company further pointed out that it called in 32,502 dig tickets during 2018 and 2019 without incident.
- 3 On September 22, 2020, Staff filed a response recommending the Commission deny the Company’s request for mitigation. Staff explained that the Penalty Assessment amount was determined based on several factors, including the Company’s failure to report the damage incident to the facility operator, to the one-call notification system, and to the Commission, as RCW 19.122.050 requires. The Commission learned about the incident through a damage report submitted by Puget Sound Energy. Staff also considered the Company’s past violations for excavating after valid dig tickets had expired. Because InfraSource damaged underground utilities, failed to report the incident, and has recently violated the dig law, Staff does not support a penalty reduction.

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 As a preliminary matter, we disagree with Infrasource's position that it was denied an opportunity to participate in the investigation process. A company that has a factual dispute with violations alleged in a penalty assessment may request a hearing upon receiving notice of the penalty. Alternatively, companies may submit a written request for mitigation, as Infrasource did here. This process affords companies ample opportunity to explain any factual dispute or mitigating circumstances and is the appropriate forum for resolving any outstanding issues.
- 7 We agree with Staff that mitigation is not appropriate in the circumstances presented here. This is the Company's third violation, and damage to gas pipelines 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. The damage incident at issue could have resulted in a fire or an explosion. The Commission consistently assesses maximum penalties for these types of violations.
- 8 InfraSource has not introduced any new information or explained additional circumstances that would warrant a further penalty reduction. It is the Company's responsibility to ensure dig tickets have not expired and to follow reporting requirements. The Company stated only that it inadvertently allowed the dig ticket to expire, offering no explanation for its failure to report the damage. Furthermore, the Company was penalized for the same violation in 2018. We agree with Staff that the increased penalty amount is appropriate to incentivize the Company to ensure that excavation is performed only after providing the required notice to facility operators to mitigate the risk of striking underground facilities. Accordingly, we find that the Commission appropriately

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

penalized InfraSource for its repeat violation and conclude that the Company's request for mitigation should be denied.

ORDER

THE COMMISSION ORDERS:

- 9 (1) InfraSource Services, LLC's request for mitigation is DENIED.
- 10 (2) The \$5,000 penalty is due and payable within 10 days of the effective date of this order.
- 11 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 September 28, 2020.

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.