



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

621 Woodland Square Loop SE • Lacey, Washington 98503

P.O. Box 47250 • Olympia, Washington 98504-7250

(360) 664-1160 • TTY (360) 586-8203

November 23, 2022

Amanda Maxwell, Executive Director
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

RE: *Washington Utilities and Transportation Commission v. Northwest Fence Company Inc.*
Commission Staff's Response to Application for Mitigation of Penalties
Docket D-220630

Dear Ms. Maxwell:

On October 6, 2022, the Washington Utilities and Transportation Commission (Commission) issued a penalty against Northwest Fence Company Inc. (NW Fence or Company) for a violation of RCW 19.122.055(1)(a). The Penalty Notice included:

- \$1,000 penalty for one violation of RCW 19.122.030(1)(a) for failing to mark the excavation area in white paint on June 1, 2022.
- The opportunity to suspend and ultimately waive an \$800 portion of the \$1,000 penalty amount for 12 months if Northwest Fence completes Dig Safe Training provided through the National Utility Contractors Association (NUCA) within 45 days of the date the Commission issues the Penalty Assessment;
- And the Company incurs no additional dig law violations within 12 months of the date of the Penalty Assessment.

This violation was for failing to mark the excavation area in white paint, on June 1, 2022. The Complainant in this case was the City of Spokane. The Complainant filed the complaint after repeated incidents with the Company failing to use white paint when marking the area to be located. The Washington State Dig Law Safety Committee (Committee) reviewed the case on July 27, 2022, and determined the Company violated RCW 19.122.030(1)(a). The Committee submitted its recommendation to the Commission on August 22, 2022.

On November 10, 2022, the Company responded to the Commission's penalty assessment by admitting the violation and requesting mitigation because of the actions they have taken post-

incident. The Company has made the following changes to their internal processes and procedures;

- *Provide detailed locate instructions with every locate and have a dedicated person in our office from 7 to 5 Monday through Friday to answer any questions .*
- *We provide flags for our customers to indicate our work areas and notify them when to put them out prior to issuing locates.*
- *Provide site contact information for responsible individuals on sites that are large or have multiple locations of work.*
- *Since July of 2022, we attach maps indicating work area on every locate request.*

RCW 19.122 is clear in its requirements that the excavator is responsible for marking the area to be located in white paint and authorizes the Commission to assess a penalty of up to \$5,000 if an excavator fails to mark with white paint. The Company requested mitigation of its \$1,000 penalty amount, noting that the company goes above and beyond the requirements of marking with white paint by including maps and detailed descriptions in its locate requests.

Commission Staff (Staff) and the Committee took into consideration that Northwest Fence has not been penalized previously by the Commission, thus a fair recommendation was made for \$1,000 penalty with an offer to suspend \$800 on conditions; the company pays \$200, completes NUCA Dig Safe training, and incurs no additional dig law violations within 12 months of the date of the Commission order. The Company has not made any indication it implemented a new process to ensure all markings are being done with white paint. The Company did not provide any additional information than what was already considered during the review. Staff does not find there is sufficient justification for further mitigation.

If you have any questions, please contact Joice Hagen, Compliance Investigator, Pipeline Safety and Damage Prevention, at (360) 664-1321, or by email at Joice.Hagen@utc.wa.gov.

Sincerely,

Scott Rukke
Chief Engineer