

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

<p>In the Matter of a Penalty Assessment Against</p> <p>BODINE CONSTRUCTION COMPANY INC.,</p> <p>in the amount of \$2,500</p>	<p>DOCKET D-220791</p> <p>ORDER 01</p> <p>GRANTING MITIGATION, IN PART; IMPOSING PENALTY OF \$1,000</p>
---	---

**BACKGROUND**

- 1 On November 16, 2022, the Washington Utilities and Transportation Commission (Commission) issued a penalty assessment (Penalty Assessment) in the amount of \$2,500 against Bodine Construction Company Inc. (Bodine or Company), alleging one violation of Revised Code of Washington (RCW) 19.122.055(1)(a).
- 2 On November 17, 2022, Bodine filed an application for mitigation, admitting the violation and requesting a decision based on the written information provided. In its request, the Company stated that it had a valid locate on the date it began excavation, July 6, 2022. The locate expired on July 9 and the damage occurred on July 12. The Company further stated that the locate paint was still visible on the ground on the date the damage occurred.
- 3 On December 2, 2022, Commission staff (Staff) filed a response recommending the Commission grant the Company’s request for mitigation, in part. Staff states that, under the circumstances, the expired locate did not directly contribute to the damage incident. Further, Staff states that the Company received a prior penalty assessment that suspended an \$800 portion of the penalty subject to the condition that the Company did not incur any further violations before July 2023. This \$800 penalty will now be imposed as a result of the violation cited in the Penalty Assessment, in addition to any penalty imposed here. Accordingly, Staff recommends the Commission mitigate the penalty to \$1,000 because a total penalty of \$1,800 for two violations is sufficiently punitive, particularly given that the Company attended Dig Safe Training in response to the first penalty assessment.

**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 an underground gas facility is subject to civil penalty of up to \$10,000 for each violation. Here, the Commission imposed a \$2,500 penalty for one violation of RCW 19.122.055(1)(a).

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.<sup>1</sup>

6 Staff recommends the Commission grant mitigation to \$1,000. We agree with Staff's recommendation. The Commission's goal in any enforcement action is to obtain compliance. The Company has provided sufficient evidence that it continues to prioritize public safety and it continues to make a dedicated effort to comply with the requirements of RCW 19.122. In this case, the damage was not a direct result of the expired locate, and excavation began on the area at issue prior to the locate expiring. The Company's employees were operating under the reasonable belief that the locate was current and accurate. Accordingly, the Commission mitigates the penalty to \$1,000.

**ORDER**

THE COMMISSION ORDERS:

7 (1) Bodine Construction Company Inc.'s request for mitigation is GRANTED, in part, and the penalty is reduced to \$1,000.

8 (2) Bodine Construction Company Inc. must pay the \$1,000 penalty within 10 days of the effective date 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 6, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

---

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

AMANDA MAXWELL  
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.**