

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

RAMEX EXCAVATING LLC

in the amount of \$1,000

DOCKET DG-230590

ORDER 01

ORDER DENYING CONTEST

BACKGROUND

- 1 On July 25, 2023, the Washington Utilities and Transportation Commission (Commission) issued a Penalty Assessment DG-230590 against Ramex Excavating LLC (Ramex Excavating or Company) in the amount of \$1,000, alleging one violation of RCW 19.122.055(1)(a) for failing to notify a one-number locator service and causing damage to a hazardous liquid or gas underground facility on February 3, 2023. The Penalty Assessment offered Ramex the opportunity to suspend \$800 of the penalty on the condition that Company field crew and supervisors successfully complete National Utility Contractors Association (NUCA) Dig Safe training within 90 days, and the Company incur no additional dig law violations within 12 months.
- 2 On July 27, 2023, the Company filed a response contesting the violation and stating that it did not damage the facility, but that an employee of the General Contractor exposed the gas line.
- 3 On August 22, 2023, Staff filed a response letter in this Docket recommending the Commission deny the Company's contest of the violation. In its letter, Staff states that during its investigation, on July 6, 2023, Staff requested additional information from the Company to support its claim that the Company did not cause the damage. The Company responded, again denying responsibility and stating that the General Contractor would reply and take responsibility. The General Contractor's ultimate response denied knowledge of the cause of the damage.
- 4 Staff's letter also reported on communication with PSE wherein PSE again alleges that the Company acknowledged that it was at fault.

DISCUSSION AND DECISION

- 5 RCW 19.122.055(1)(a) considers any excavator who fails to notify a one-number locator service and causes damage to a hazardous liquid or gas underground facility is subject to a civil penalty." Excavators who violate these provisions are subject to penalties of up to

\$10,000 for each violation.¹ Here the commission assessed a penalty of \$1,000 for one violation.

6 The Commission denies the Company's contest of the violations. The disputed facts are those that were fully considered in the original investigation, and the Company has provided no new information. PSE credibly testifies that the Company acknowledged its responsibility as the excavator.

7 We will, however, construe the Company's submission as a request for mitigation. The Commission considers several factors when evaluating a request for mitigation, including whether the company demonstrates that the facts were incorrect or do not support the penalty assessment, Whether the company demonstrates that information or factors exist that the commission may not have considered, and whether the company explains other circumstances that convince the Commission that this violation did not occur or that a lesser penalty will be equally effective.²

8 Here, the Company did not introduce any new information that would warrant mitigation of the penalty. Ramex continues to insist that the damage was caused by another party but has failed to provide any evidence to corroborate its claim. Companies that dig without first obtaining an underground utility locate or dig outside the boundaries covered by a locate ticket, 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. It is the Company's responsibility to secure a utility locate prior to performing an excavation. Accordingly, we find that the Commission properly penalized Ramex for damaging a pipeline and conclude that the Company's request for mitigation should be denied.

9 Therefore, we find that Staff's recommendation to impose the full \$1,000 penalty is appropriate, and conclude that the Company's request for mitigation should be denied. However, the Commission's interest in any enforcement action is in ensuring future compliance. Accordingly, we reiterate the offer in the Penalty Assessment to suspend an \$800 portion of the penalty subject to conditions. Accordingly, Ramex must take one of the following actions within 10 days of the effective date of this Order:

- Pay the \$1,000 penalty.
- Pay \$200 of the penalty amount and notify the Commission that the Company accepts the Commission's offer to suspend and ultimately waive, the remaining \$800 portion of the penalty subject to the conditions that (1) Ramex supervisors and field crew attend NUCA Dig Safe Training within 90 days of the effective date of

¹ RCW 19.122.055(1)(a).

² Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013) at ¶19.

this order and submit documentation of attendance within five days of completion, and (2) Ramex incurs no additional violations of RCW 19.122 within 12 months of the effective date of this Order.

ORDER

THE COMMISSION ORDERS THAT:

- 10 (1) Ramex Excavating, LLC's contest of the violation is DENIED.
- 11 (2) Ramex Excavating, LLC, must either pay the \$1,000 penalty or take the alternative action described in paragraph 9 of this Order.

DATED at Lacey, Washington, and effective September 28, 2023

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

KATHY HUNTER
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.