

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET D-161118
BARRETT'S ENTERPRISE, INC.	ORDER 01
in the amount of \$11,000	ORDER DENYING MITIGATION

BACKGROUND

- 1 On October 4, 2016, the Washington Dig Law Safety Committee (Safety Committee) filed with the Washington Utilities and Transportation Commission (Commission) a recommendation for penalties against Barrett's Enterprise, Inc. (Barrett's Enterprise or Company) for violations of RCW 19.122. The Safety Committee found that Barrett's Enterprise violated RCW 19.122.030(1) by failing to request a utility locate prior to performing an excavation on one occasion. The Safety Committee also found that Barrett's Enterprise violated RCW 19.122.030(2) by failing to wait two business days to begin excavation after requesting a utility locate on two occasions.
- 2 The Safety Committee recommended penalties of \$1,000 for the first violation and \$5,000 for each additional violation, for a total penalty of \$11,000. The Safety Committee further recommended the Commission suspend a \$10,000 portion of the penalty for a period of one year, and then waive it, subject to the following conditions: 1) all Barrett's Enterprise owners and employees must attend National Utility Contractor Association (NUCA) Dig Safe Training within 90 days, and 2) the Company must not incur any additional violations of RCW 19.122.
- 3 On November 10, 2016, the Commission issued a Penalty Assessment against Barrett's Enterprise in the amount of \$11,000 for three violations of RCW 19.122.030. The Penalty Assessment adopted the Safety Committee's recommendation, in part, but suspended only a \$7,000 portion of the penalty due to the number of violations and the Company's history of requesting utility locates, which demonstrates that the Company was negligent rather than ignorant of its legal obligations.
- 4 The Penalty Assessment included a notice that an application for mitigation of the penalties must be made within 15 days of the date the Penalty Assessment is received. Barrett's Enterprise was properly served with the Penalty Assessment on November 16, 2016. Accordingly, any application for mitigation was due by December 2, 2016.

- 5 On February 22, 2017, Barrett’s Enterprise filed a letter with the Commission in response to a collections notice it received for the full \$11,000 penalty. In its letter, Barrett’s Enterprise requests the Commission make an exception and allow it to pay the reduced penalty of \$4,000 originally set out in the Penalty Assessment. The Company stated that it failed to timely respond to the Penalty Assessment because it was sent to its P.O. Box rather than its main office. The Company further stated that it sent three employees to NUCA Dig Safe Training on January 19, 2017.
- 6 On March 9, 2017, Commission staff (Staff) filed a response recommending the Commission deny the Company’s request to pay the reduced \$4,000 penalty. In its response, Staff explained that two additional complaints against Barrett Enterprise alleging violations of RCW 19.122.030 were filed with the Safety Committee in December 2016 and January 2017. In light of this new information, Staff no longer supports suspending any portion of the penalty.

DISCUSSION AND DECISION

- 7 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.” RCW 19.122.030(2) requires excavators to provide the required notice to a one-number locator service “not less than two business days and not more than ten business days before the scheduled date for commencement of excavation, unless otherwise agreed by the excavator and facility operators.” 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 Here, the Commission assessed reduced penalties of \$1,000 for the first violation and \$5,000 for each subsequent violation.
- 8 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

¹ RCW 19.122.030(5).

² RCW 19.122.055(1)(a).

convince the Commission that a lesser penalty will be equally or more effective in ensuring the company's compliance.³

9 Because Barrett's Enterprise failed to timely respond to the Penalty Assessment, we deny the Company's request for mitigation. The Company's claim that the Penalty Assessment was not forwarded to its main office until last week is contradicted by the fact that Company representative Kaylee Barrett personally signed for it on November 16, 2016. Accordingly, the Company failed to introduce any information that would constitute good cause to accept its late response.

10 The Company also failed to demonstrate that a lesser penalty would be equally or more effective in ensuring its compliance going forward. Rather, the Company merely stated that "this will not happen again." As Staff notes in its response, however, the Safety Committee received two additional complaints against Barrett's Enterprise alleging violations of RCW 19.122.030 after the Penalty Assessment was served. Although this information does not constitute evidence on which the Commission may base its decision, it undermines the Company's assurance of future compliance.

11 Accordingly, we find that Staff's recommendation to impose the full \$11,000 penalty is appropriate, and conclude that the Company's request for mitigation should be denied.

ORDER

THE COMMISSION ORDERS THAT:

- 12 (1) Barrett's Enterprise, Inc.'s request for mitigation is DENIED.
- 13 (2) The \$11,000 penalty is due immediately.

DATED at Olympia, Washington, and effective March 15, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
Executive Director and Secretary

³ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013) at ¶19.

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.