



STATE OF WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

621 Woodland Square Loop SE • Lacey, Washington 98503

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September 22, 2020

Mark L. Johnson, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
621 Woodland Square Loop SE  
Lacey, WA 98503

RE: *Washington Utilities and Transportation Commission v. Vasiliys Construction Plus, LLC*  
Commission Staff's Response to Contest of Violations  
Docket D-200170

Dear Mr. Johnson:

On March 11, 2020, the Washington Dig Law Safety Committee (Safety Committee) referred three violations to the Washington Utilities and Transportation Commission (Commission) following a review of complaints against Vasiliys Construction Plus, LLC (Vasiliys Construction) on February 18, 2020. The Safety Committee recommended an \$11,000 penalty for three violations of RCW 19.122, as follows:

- \$1,000 penalty for one violation of RCW 19.122.030(2) that occurred on April 12, 2019; and
- \$5,000 penalty for one violation of RCW 19.122.030(2) that occurred on April 15, 2019; and
- \$5,000 penalty for one violation of RCW 19.122.030(5) that occurred on May 3, 2019.

The Safety Committee further recommended that the Commission provide an opportunity to the Company to suspend, and ultimately waive, \$5,000 of the total penalty amount, subject to the conditions that the owner of the Company attend National Utility Contractors Association (NUCA) Dig Safe Training within 12 months of a penalty assessment, and if the Company committed no additional violations of RCW 19.122 within 12 months of a penalty assessment.

Following a staff investigation of the recommendation, which determined the Company violated RCW 19.122.030(2) on two occasions, the Commission issued a \$6,000 penalty against the Company on July 28, 2020, as follows:

- \$1,000 penalty for the violation of RCW 19.122.030(2) that occurred on April 15, 2019; and
- \$5,000 penalty for the violation of RCW 19.122.030(2) that occurred on May 3, 2019.

The Commission offered an opportunity to suspend, and ultimately waive, a \$2,000 portion of the \$6,000 penalty amount, subject to the conditions recommended by the Safety Committee.

On August 13, 2020, the Company responded to the penalty assessment by contesting the violations and requesting a hearing. The Company did not include any explanation or reasons for consideration behind its contest of the violations, as required by the penalty assessment.

During its review on February 18, 2020, the Safety Committee considered evidence provided by Puget Sound Energy (PSE), including photos and documentation, and determined that the Company violated RCW 19.122.030(2) on two occasions and RCW 19.122.030(5) on one occasion, which require excavators to provide the required notice to facility operators before beginning excavation, and require excavators not excavate until all known facility operators have marked or provided information regarding underground utilities. The Company decided to not attend or present any information to the Safety Committee regarding the complaints.

Staff was present during the Safety Committee's review. Staff also reviewed the evidence presented by PSE and considered this evidence during the subsequent investigation after the Commission received the Safety Committee's recommendation. Staff was also unable to obtain any additional information from the Company during the investigation.

Staff's investigation determined that PSE failed to present sufficient evidence to determine that a violation of RCW 19.122.030(2) occurred on April 12, 2019.

Staff's investigation determined that a violation of RCW 19.122.030(2) occurred on April 15, 2019, when a PSE damage prevention representative returned to a worksite at which Vasiliys had been previously observed excavating without a valid dig ticket. The PSE damage prevention representative took photos of the Company actively excavating, and the one-call notification database confirmed that the Company did not have a valid dig ticket for the excavation.

Staff's investigation also determined that a violation of RCW 19.122.030(2) occurred on May 3, 2019 when a PSE damage prevention representative was notified by PSE's locator that the Company was excavating prior to its arrival to mark underground utilities in response to a utility locate request made by the Company on May 1, 2019, which was not valid until May 4, 2019. Staff reviewed photos taken by the PSE damage prevention representative, which depicted the Company actively excavating, and determined that the Company was in violation of RCW 19.122.030(2) by excavating without first providing the required notification, which includes waiting two full business days to allow facility operators to mark their utilities before beginning excavation. Because it was unclear if all utility operators had marked their utilities at the time the photos were taken by PSE, Staff determined that this was a violation of RCW 19.122.030(2), and not necessarily a violation of RCW 19.122.030(5) as recommended by the Safety Committee.

RCW 19.122 is clear in its requirements that the excavator is responsible for notifying 811 before excavating and authorizes the Commission to assess penalties for violations up to \$5,000 for any violation of the chapter referred to it by the Safety Committee. The Company contested the violations but failed to present any evidence during the Safety Committee's review, staff's investigation, or in its response to the penalty assessment. Staff maintains the evidence that was available for the Safety Committee's review and investigation are sufficient to conclusively demonstrate that the Company committed the violations. For these reasons, Staff believes that the penalty amount assessed is appropriate and that the Commission should deny Company's request for a hearing in contest of the penalty.

If you have any questions, please contact Steve Davidson, Compliance Investigator, Pipeline Safety and Damage Prevention, at (360) 664-1321, or by email at [steve.davidson@utc.wa.gov](mailto:steve.davidson@utc.wa.gov).

Sincerely,

Sean C. Mayo, Director  
Pipeline Safety