

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment	)	DOCKET DG-144100
Against	)	
	)	ORDER 01
GREG HUYLAR d/b/a TRI VALLEY	)	
CONSTRUCTION	)	ORDER DENYING MITIGATION
	)	
in the amount of \$4,000	)	
.....	)	

**BACKGROUND**

- 1 On April 13, 2015, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment DG-144100 against Greg Huylar d/b/a Tri Valley Construction (Tri Valley Construction or Company) in the amount of \$4,000, alleging three violations of RCW 19.122.030(1)(a) for failing to request a dig ticket prior to performing an excavation on three separate occasions.
  
- 2 On April 28, 2015, Tri Valley Construction filed an application for mitigation, requesting a decision based on the written information provided. While the Company admits the violations in its application, it contests them in its written response. With respect to the first violation, Tri Valley Construction claims it had a valid locate on file prior to the damage incident, and referenced a ticket requested by the Company on July 30, 2013. The Company claims the damage occurred not on Wednesday, September 18, as Staff alleges, but on Sunday, September 8, which falls within 45 days of the locate request as required.<sup>1</sup>
  
- 3 With respect to the second violation, Tri Valley Construction claims that the general contractor who directed the Company’s operator to perform the dig should be held responsible for the damage incident. With respect to the third violation, Tri Valley Construction claims its subcontractor, Russell Crane Service, Inc. (Russell Crane Service) was responsible for the damage.

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<sup>1</sup> RCW 19.122.030(6)(c) provides that facility operator markings of underground utilities expire forty-five calendar days from the date that the excavator provides notice to a one-number locator service. Excavation after that date requires additional notice to the one-number locator service.

- 4 On June 2, 2015, Commission staff (Staff) filed a response recommending the Commission deny the Company's request for mitigation. With respect to the first violation, Staff explained that all records provided by Cascade Natural Gas (CNG) indicate that damage to CNG's facility occurred on September 18, 2013, not September 8. The locate ticket requested by Tri Valley Construction on July 30, 2013, while valid, expired on September 13, 2013. Because Tri Valley Construction was required to obtain a new locate ticket before digging on September 18, Staff does not support mitigating the \$1,000 penalty assessed for the first violation.
- 5 With respect to the second violation, Staff notes that it is the excavator's responsibility, not the general contractor's, to provide notice of the scheduled excavation and obtain a locate prior to commencing an excavation. Accordingly, Staff does not support mitigating the \$1,000 penalty assessed for the second violation.
- 6 With respect to the third violation, Staff notes that the Company's subcontractor, Russell Crane Service, is owned by the same three individuals who own Tri Valley Construction. Moreover, Tri Valley Construction, not Russell Crane Service, reported the damage incident to CNG, and CNG noted that vehicles on site at the time of the incident bore Tri Valley Construction's logo. Because Staff is unpersuaded by the Company's argument, Staff does not support mitigating the \$2,000 penalty assessed for the third violation.

### **DISCUSSION AND DECISION**

- 7 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 a hazardous liquid or gas facility is subject to a civil penalty of up to \$10,000 for each violation. Here, the Commission assessed reduced penalties of \$1,000 for the first two violations, and an escalated penalty of \$2,000 for the third violation, which was a repeat violation that occurred after the Company received technical assistance for the first two violations.
- 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 convince the Commission that a lesser penalty will be equally or more effective in ensuring the company's compliance.<sup>2</sup> In this instance, Tri Valley Construction has neither introduced new information that has any bearing on the outcome, nor explained other

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

circumstances that would warrant a further reduction of the penalty. Nevertheless, we will address the Company's arguments and Staff's response.

- 9 We uphold Staff's finding that, based on documentation submitted by CNG, the first violation occurred on September 18, 2013, not on September 8, as the Company claims. We also agree with Staff's assertion that Tri Valley Construction may not blame the second violation on the direction it received from its contractor. The law clearly provides that the excavator who performs a dig is the party responsible for marking the dig site and obtaining a locate ticket.<sup>3</sup> Finally, we are unpersuaded by the Company's attempt to shift the blame for the third violation to Russell Crane Service, particularly when Tri Valley Construction, not Russell Crane Service, reported the incident to CNG. At any rate, the companies are owned by the same individuals.
- 10 We find that reduced penalties of \$1,000 are appropriate for the first two violations, and an escalated – but still reduced – \$2,000 penalty is appropriate for the third violation, which occurred after the Company received technical assistance. As Staff notes in its response, these violations are serious and potentially harmful to the public. Companies that dig without first obtaining an underground utility locate are putting their employees, the public, and the facility operator's employees at risk. Any of the three damage incidents at issue could have resulted in a fire or an explosion. The penalty amount, while not unduly punitive, is appropriate in light of the seriousness of the violations. Accordingly, we deny the Company's request for mitigation.

### **ORDER**

#### THE COMMISSION ORDERS:

- 11 (1) Greg Huylar d/b/a Tri Valley Construction's request for mitigation is DENIED.
- 12 (2) The \$4,000 penalty is due and payable no later than June 25, 2015.

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<sup>3</sup> RCW 19.122.030(1)(a) provides that, "before commencing any excavation, an excavator must 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."

- 13 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective June 11, 2015.

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**STEVEN V. KING**  
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.**