

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against NORTH SKY COMMUNICATIONS LLC in the amount of \$5,000	DOCKET DG-190624 ORDER 01 DENYING MITIGATION; SUSPENDING PENALTY, IN PART
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BACKGROUND

- 1 On August 7, 2019, the Washington Utilities and Transportation Commission (Commission) issued a penalty assessment against North Sky Communications LLC (North Sky or Company) in the amount of \$5,000, alleging one violation of RCW 19.122.030(1)(a) for failing to request a dig ticket prior to performing an excavation on one occasion. The Company submitted a utility locate request on December 4, 2018, which expired 45 days later on January 18, 2019. The damage incident occurred 13 days later on January 31, 2019.
- 2 The violation in this docket is North Sky's second dig law violation. The Commission previously assessed a \$1,000 penalty against the Company on February 8, 2018, in docket DG-180104 for failing to submit a request to locate utilities prior to excavation.
- 3 On August 16, 2019, North Sky filed an application for mitigation, requesting a decision based on the written information provided. The Company admits the violation but requests a reduced penalty, explaining the substantial measures it has taken over the past 11 months to enhance its safety and training program. The Company explained it hired additional safety professionals to provide oversight across all regions of Washington State where North Sky performs excavations. In addition, the Company described its safety program, which includes site visits, employee coaching, dig ticket review, documentation, training, and an extensive onboarding process for every new employee. Finally, North Sky submitted documentation showing that over 100 of its employees throughout Washington state completed trench and excavation safety classes facilitated by North Sky between April and June of 2019.
- 4 On August 27, 2019, Commission staff (Staff) filed a response recommending the Commission suspend \$2,500 of the \$5,000 penalty for a period of 12 months, and then waive it, subject to the condition that the Company incurs no additional dig law

violations within 12 months of the date of this Order. Staff supports suspending a portion of the penalty because the Company has improved its processes and made worker and public safety a priority. Staff also notes that the Company performs a lot of underground utility installation and work across the state and has not caused damage to an underground utility without a valid dig ticket since the damage incident at issue here. The Company submitted 1,999 utility locate requests between January 31, 2019, and August 20, 2019. Finally, Staff explains that the information the Company provided in the mitigation request is new and was not considered in setting the assessed penalty amount.

DISCUSSION AND DECISION

- 5 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 a reduced penalty of \$5,000, which is consistent with the Commission's practice for a second violation.
- 6 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.¹
- 7 We find that North Sky did not provide any new information that would warrant mitigation of the penalty. Companies that dig without first obtaining an underground utility locate, or after the utility locate expires, put their employees, the public, and the facility operator's employees at risk. The Company has a long history of obtaining locates and is well aware of its legal obligations. In addition, this is the Company's second violation. Accordingly, we conclude a \$5,000 penalty is appropriate to ensure future compliance.
- 8 However, we agree with Staff's recommendation to suspend a portion of the penalty. The Commission considers several factors in determining whether to suspend a portion of the penalty, including whether this is a first-time penalty for this or a similar violation, and whether the company has taken specific actions to remedy the violations and avoid similar violations in the future.

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

- 9 Here, the Company provided evidence in its mitigation request of the specific and substantial actions it has taken to avoid similar violations in the future. The Company hired additional safety personnel to provide oversight of all areas of its operations and to ensure the safety of their employees and the general public through continued training, coaching, and job-site observations. The Company explained that managers and supervisors will review dig tickets prior to issuing or re-circulation of a job to a crew that had been stalled, put on hold, or requires rework. This step will help ensure that utility locates are renewed when they expire. The Company also provided evidence that it performed trenching and exaction training to all of its team members and will continue to schedule classes as they add to the team. The Company described a robust onboarding process for new employees, and a culture of safety at every level of the organization.
- 10 Because the Company took specific and substantial actions to avoid similar violations in the future, we agree with Staff's recommendation to suspend \$2,500 of the \$5,000 penalty for a period of 12 months, and then waive it, subject to the condition that the Company incurs no additional dig law violations within 12 months of the date of this Order.

ORDER

THE COMMISSION ORDERS:

- 11 (1) North Sky Communications, LLC's request for mitigation is DENIED.
- 12 (2) North Sky Communications, LLC is assessed a penalty of \$5,000. A \$2,500 portion of the penalty will be suspended for a period of one year from the date of this Order, and then waived, subject to following conditions: (1) North Sky Communications, LLC must not incur any additional violations of RCW 19.122; and (2) North Sky Communications, LLC must pay the \$2,500 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement within 10 days of the effective date of this Order.

- 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 September 16, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK L. JOHNSON
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.