

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET DG-190628
TROPICAL DEW LLC	ORDER 01
In the amount of \$5,000	DENYING MITIGATION

BACKGROUND

- 1 On May 2, 2019, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment DG-190628 against Tropical Dew LLC (Tropical Dew or Company) in the amount of \$5,000, alleging one violation of RCW 19.122.030(2) for failing to provide the required notice to facility operators through a one-number locator service prior to excavation and damaging an underground natural gas facility on January 11, 2019, in Pasco, Washington.
- 2 On August 19, 2019, Tropical Dew filed an application for mitigation, admitting the violation, but requesting that the \$5,000 penalty be mitigated and explaining that it had believed another penalty assessment from the Commission, Docket DG-190064, covered the damage incident in this docket. Tropical Dew included the following explanation with its request:

On March 21, 2019, Tropical Dew LLC was granted a suspension of a \$1000 penalty on the condition that we incur no additional violations within 12 months of the Notice given. From that date forward, we have made sure to make every effort possible to call a locator service before beginning to excavate. Since that date, we have not had a single incident or violation.

When we at Tropical Dew were granted this offer to suspend the penalty, we were very happy to accept. Unfortunately, we were under the impression that it included the incident on January 22, 2019 since it had occurred two months before the offer to suspend the \$1000 penalty.

3 On August 27, 2019, Commission staff (Staff) filed a response recommending the Commission deny the Company's request for mitigation. In its response, Staff explains that Docket TG-190064 did not include the damage incident at issue in this case. Staff states that it did not even receive notification from Cascade Natural Gas Corporation (CNGC) of the damage incident at issue here until March 5, 2019, the same day that Staff concluded and submitted its investigation for review in Docket DG-190064. Staff further explains that during its investigation of the damage incident in DG-190064, the Company never mentioned the January incident at issue in this docket.

4 The case is further complicated by the conditions of suspension of the \$1,000 penalty in Docket DG-190064. In that docket, the Commission suspended a \$1,000 penalty conditioned on the Company not incurring any additional dig law violations in the following year. Staff argues that the damage incident at issue in this case should not trigger the suspended penalty amount in Docket DG-190064 because it occurred on January 22, 2019, prior to the penalty assessment in DG-190064.

5 Regarding the \$5,000 penalty assessed in this docket, Staff recommends that the Commission deny Tropical Dew's application for mitigation. Staff explains that it determined that a \$5,000 penalty amount was appropriate in this case because of several factors. First, the Commission has a policy regarding multiple, separate violations by a Company that weighs against a lesser penalty amount. Second, for the January 22, 2019, damage incident, CNGC reported to Staff that the incident was not self-reported by Tropical Dew. It was reported, rather, by a concerned contractor on an adjacent property, who smelled gas. Last, Tropical Dew denied, at least initially, that it had caused the damage.

DISCUSSION AND DECISION

6 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." Further, 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

7 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.³

8 Here, the Company did not introduce any new information that would warrant mitigation of the penalty. Companies that dig without giving proper notice and without a valid dig 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. Further, it is concerning that Tropical Dew failed to report the damage incident to CNGC and then proceeded, at least initially, to deny that it had caused the damage. It is the Company’s responsibility to provide adequate notice and secure a valid dig ticket covering the area prior to performing any excavation. It is also expected that companies will notify the utility in the event that damage occurs to a gas line. Failure to report the January 22, 2019, damage incident put Tropical Dew’s employees, the public, and the facility operator’s employees at increased risk. Fortunately, a third-party observer notified CNGC and helped to avoid any injury.

9 Accordingly, we find that the Commission properly penalized Tropical Dew for damaging a gas pipeline, and conclude that the Company’s request for mitigation should be denied. We find it appropriate under the circumstances, considering the small size of Tropical Dew, to afford the Company an opportunity to engage with Staff to discuss a payment plan, which should alleviate some of the burden of paying this penalty.

ORDER

THE COMMISSION ORDERS:

10 (1) Tropical Dew LLC’s request for mitigation is DENIED.

¹ RCW 19.122.030(5).

² RCW 19.122.055(1)(a).

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

- 11 (2) Tropical Dew LLC is assessed a penalty of \$5,000. Tropical Dew LLC must either pay the \$5,000 penalty or file jointly with Commission staff a proposed payment arrangement by September 11, 2019.

DATED at Lacey, Washington, and effective August 28, 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, 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.