

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

LANDTEK ENTERPRISES, INC.,

in the amount of \$1,000

DOCKET DG-230011

ORDER 01

ORDER DENYING CONTEST OF
VIOLATION; SUSPENDING PENALTY
SUBJECT TO CONDITION

BACKGROUND

- 1 On February 1, 2023, the Washington Utilities and Transportation Commission (Commission) issued a Penalty Assessment against Landtek Enterprises, Inc., (Landtek or Company) in the amount of \$1,000, alleging one violation of RCW 19.122.055(1)(a) for failing to notify a one-number locator service prior to performing an excavation and subsequently causing damage to an underground gas facility. The Penalty Assessment offered Landtek the opportunity to suspend \$800 of the penalty subject to the conditions that Company management and field crew successfully complete National Utility Contractors Association (NUCA) Dig Safe training within 90 days, and that the Company incur no additional dig law violations within 12 months.¹
- 2 On February 6, 2023, Landtek responded to the Penalty Assessment, contesting the violation and requesting that the Commission make a determination based on the information provided. Landtek explains in its response that it called in a locate request with the homeowner present, and that when it began excavation locate marks were present within the marked area.
- 3 On March 3, 2023, Commission staff (Staff) filed a response recommending the Commission deny the Company's contest of the violation. In its response, Staff explains that the information that Landtek provided with its application is the same information that was provided during the investigation and fails to provide any evidence that Landtek called in a locate request. In its response, Staff acknowledges that Cascade Natural Gas (CNG), in an email communication, stated that CNG did not bill Landtek for the damage because the damaged facility had not been located during the locate process.

¹ RWC 19.122,

4 Staff does not support any mitigation of the penalty, but recommends the Commission offer the Company the same opportunity to suspend an \$800 portion of the penalty, subject to conditions, that was offered in the Penalty Assessment.

DISCUSSION AND DECISION

5 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.”² Excavators who violate these provisions are subject to penalties of up to \$10,000 per violation.³

6 The Commission denies the Company’s contest of the violations. The disputed facts were fully considered in the original investigation, and the Company has provided no new information. The Company failed to provide evidence of a valid locate for the date of the damage.

7 We will, however, construe the Company’s submission as a request for mitigation. 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.⁴

8 Here, the Company did not introduce any new information that would warrant mitigation of the penalty. Companies that dig without first obtaining an underground utility locate or dig outside the boundaries covered by a locate 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. It is the Company’s responsibility to secure a utility locate prior to performing an excavation. Accordingly, we find that the Commission properly penalized Landtek for damaging a pipeline and conclude that the Company’s request for mitigation should be denied.

9 However, taking into consideration CNG’s admission that the damaged pipeline was missed by the locator, as well as the Company’s uncontroverted assertion that it

² RCW 19.122.030(5).

³ RCW 19.122.055(1)(a).

⁴ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶19 (January 7, 2013).

excavated in good faith reliance on the locate marks, we agree that some leniency is warranted. We therefore exercise our discretion to suspend the entire penalty for one year, and then waive it, subject to the condition that the Company incurs no further dig law violations during that period.

ORDER

THE COMMISSION ORDERS THAT:

- 10 (1) Landtek Enterprises, Inc.'s contest of the violation is DENIED.
- 11 (2) The Commission suspends the \$1,000 penalty for a period of one year, and then waives it, subject to the condition that Landtek Enterprises, Inc., incurs no further dig law violations.

DATED at Olympia, Washington, and effective March 28, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AMANDA MAXWELL
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.