



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250

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June 10, 2015

Steven V. King, Executive Director and Secretary
Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, WA 98504-7250

RE: *Washington Utilities and Transportation Commission v. Blade Excavation.*
Commission Staff's Amended Response to Application for Mitigation of Penalties
Docket DG-144098

Dear Mr. King:

On April 13, 2015, the Utilities and Transportation Commission issued a \$3,000.00 Penalty Assessment in Docket DG-144098 against Jeremy Kysar, d/b/a Blade Excavation (Blade Excavation) for 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. RCW 19.122.055(1)(a) states, 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 not more than ten thousand dollars for each violation.

On May 1, 2015, Blade Excavation wrote the commission requesting mitigation of penalties. In its mitigation request, Blade Excavation does not dispute that the second and third violation occurred. The company states, "I admit fault on #2 and #3." The company also states "Violation #1 and Violation #3 are the same violation."

Staff response: Upon further research, staff found that the correct address for the third violation was 1634 Lucca Lane, Richland, not 1638 Lucca Lane, as noted in the Penalty Assessment. The Penalty Assessment did note the correct dates of the three damage incidents, which all occurred without underground utility locates. Blade Excavation damaged underground utilities three times on three separate occasions, therefore, staff

does not support mitigation of the penalty assessment in this docket. The table below shows a summary of damages.

DATE OF DAMAGE	ADDRESS
January 4, 2013	1638 Lucca Ln
October 21, 2013	427 Sundance Drive
December 30, 2013	1634 Lucca Ln

Commission staff finds that the penalty of \$1,000 for each violation is appropriate based on consideration of the following factors:

1. **How serious or harmful the violation is to the public.** The 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. All three damage incidents could have resulted in fire or an explosion.
2. **Whether the violation is intentional.** Considerations include:
 - Whether the Company ignored staff's previous technical assistance; and
 - Whether there is clear evidence through documentation or other means that show the Company knew of and failed to request underground utility locates.

Staff became aware of the company's second violation through a review of Damage Incident Reporting Tool (DIRT) reports for damages occurring in October, 2013. Cascade Natural Gas (CNG) submitted a report that identified Blade Excavation as the excavator who damaged the CNG's natural gas service on Oct. 21, 2013, without first making a request to have underground utilities located. In response to this information, commission staff mailed Blade Excavation a technical assistance letter on Jan. 23, 2014. The letter emphasized the importance of becoming familiar with the law and following it closely, the possibility of penalties for each violation of the dig law, and included a Dig law excavator responsibilities fact sheet.

Staff's investigation included contacting CNG, who reported that Blade Excavation had also damaged the company's natural gas service, without first requesting an underground utility locate, on Jan. 4, 2013. Additionally, CNG gave staff a spreadsheet showing they sent Blade Excavation a certified letter with CNG's safety brochure and a Washington Guide to Safe Digging booklet (which provides information on the importance of calling for a locate before digging, safe digging practices and the language in RCW 19.122), and after the second damage incident on Oct. 21, 2013 had an on-site meeting with Blade Excavation.

While the commission's technical assistance letter did not reach Blade Excavation until after the third violation on Dec. 30, 2013, staff believes the company knew of its responsibility to call for underground utility locates through the technical assistance provided by CNG after the first damage incident. Staff also searched data on the website

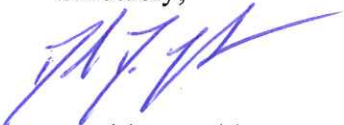
www.callbeforeyoudig.org and found that Blade Excavation had used the one number locate service 39 times in 2013, yet failed to get locates on the three incidents identified in the penalty assessment.

3. **Whether the Company self-reported the violation.** Blade Excavation self-reported all three incidents to CNG when they discovered the damage.
4. **Whether the Company was cooperative and responsive.** Staff interviewed the owner of Blade Excavation who was cooperative and responsive.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The owner of Blade Excavation told staff that moving forward locates will be requested.
6. **The number of violations.** There are three violations.
7. **The number of customers affected.** Two customers were affected by the damaged natural gas service.
8. **The likelihood of recurrence.** As a result of technical assistance provided by CNG and the commission, and payment of damage charges to CNG, staff believes the likelihood of recurrence is low. As of the last damage incident, the company has placed 61 underground utility locate requests.
9. **The Company's past performance regarding compliance, violations, and penalties.** The company had no previous history with the commission.
10. **The Company's existing compliance program.** The commission is not aware of a compliance program in place, however, the company owner told the commission investigator that utility locates will be called in going forward.
11. **The size of the Company.** The commission has no information on the size of the company.

Based on the potential harm to the public, as well as the fact the company was provided information about the requirement to call before you dig on a number of occasions, staff recommends the commission uphold the original penalty recommendation of \$3,000.

If you have any questions regarding this recommendation, please contact Lynda Holloway at (360) 664-1118, or lhollowa@utc.wa.gov.

Sincerely,



David D. Lykken
Pipeline Safety Director