

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment  
Against

JOHANSEN EXCAVATING, INC. aka  
JOHANSEN CONSTRUCTION  
COMPANY, INC.

In the amount of \$1,000

DOCKET DG-190243

ORDER 01

DENYING REQUEST FOR  
HEARING; DENYING CONTEST OF  
VIOLATION; DENYING  
MITIGATION; SUSPENDING  
PENALTY SUBJECT TO  
CONDITION

**BACKGROUND**

- 1 On May 2, 2019, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment DG-190243 against Johansen Excavating, Inc., aka Johansen Construction Company, Inc., (Johansen or Company) in the amount of \$1,000, alleging one violation of RCW 19.122.030(2) for failing to request a dig ticket prior to excavation and damaging an underground natural gas facility on October 11, 2018, in Fife, Washington.
- 2 On May 22, 2019, Johansen filed an application for mitigation, contesting the violation and requesting a hearing. Johansen included the following explanation with its request:

On 10/11/2018 [Johansen] was performing excavation work under an active Washington One Call Ticket (Ticket No. 18390091, attached for reference) that covered work being performed in the area where the utility strike took place. *(Note that the affected utility provider (PSE) was notified of the excavation associated with this ticket).*

The work being performed on 10/11/18 included the installation of a new water meter vault which was to be installed during a limited water shutdown period. Upon commencing work, it was discovered that the designed location of the new water meter vault was in conflict with existing telephone lines. For this reason, [Johansen] received field direction from the Project Owners Representative (The City of Fife) to

shift the new water meter vault to the North to avoid the existing telephone line. This field direction moved the water tie-in point, which, in hindsight, appears to be slightly outside of the Right Of Way (ROW) (see attached sketch titled "CONSTRUCTION ROW PLAN").

The [Johansen] crew, working at the direction of the Owner, then struck an unmarked PSE gas service lateral which PSE had failed to identify when requested to do so under Ticket No. 18390091.

- 3 Johansen argues that it should not be assessed any penalty because Puget Sound Energy (PSE) failed to identify its existing gas service lateral, resulting in the strike. Johansen provided a map of the area where the strike occurred as well as photographs pre- and post-excavation of the utility locates in the excavation area and the lack of utility locates where the strike occurred. Johansen explained further that

[T]he existing valve for the service lateral was completely buried and not visible at the time the utility was struck and had to be dug up and exposed before PSE could perform repair work (also confirmed in the attached photographs). Had the existing valve been visible it would have been some indicator that a buried utility was in the area and could have also helped to prevent this unfortunate utility strike from taking place.

- 4 The Company provided dig ticket No. 18390091 along with its application for mitigation. The dig ticket was requested on September 6, 2018. The dig ticket indicates a dig site location of Fife, Washington, at the intersection of State Route 99 and 54th Avenue East. It also indicates a request for utility locates, as follows:

150 FT WEST OF THE 54TH AVE E INTERSECTION WITH SR99 TO  
50 FT EAST OF THE INTERSECTION OF 59TH AVE CT E AND SR99  
ROW TO ROW, 100 FT NORTH OF THE INTERSECTION OF 54TH  
AVE E AND SR99 ROW TO ROW, 250 FT TO THE SOUTH OF THE  
INTERSECTION OF 54TH AVE E AND SR99 ROW TO ROW. AREA  
MARKED IN WHITE

The dig ticket also notes the utilities notified, and the status of marking any facilities in the area. PSE was notified for both its electric and its natural gas system. The status of PSE electric reads "Clear, No Utility Owned Facility in Excavation Area." The status of PSE natural gas reads "Marked, Complete."

5 On June 19, 2019, Commission staff (Staff) filed a response recommending the Commission deny the Company's request for hearing. In its response, Staff explains that it had reviewed the information submitted by the Company in its request for mitigation prior to the issuance of the penalty. Staff believes that the information submitted by the Company does not alter the conclusion it reached as part of its investigation: that Johansen was digging outside the work area described in its dig ticket when it struck an underground natural gas line.

6 Staff explains further that the location of the strike was not within the area requested by the dig ticket. Staff rebuts the arguments made by Johansen, stating that Company had failed to:

[M]ark the northern boundary of its proposed excavation area with white paint to indicate to the utility locator where to locate the utilities. The best information that the utility locator had was the description of the work area on the dig ticket, which requested utility marks right-of-way (ROW) to ROW. Because the damage incident happened outside of the right-of-way on private property of a hotel parking lot, Johansen did not have a valid ticket for where the damage occurred.

7 Staff notes that the photos submitted by the Company show that the natural gas line had not been marked, but that the photos and map show that the strike occurred outside of the ROW. Staff also provides that Johansen, after the strike occurred, "notified 811 and submitted a new request, which was identical to the original request, but requested an additional 50 feet beyond the [ROW] to also be marked . . . ." Staff believes this indicates Johansen realized that the damage to the natural gas line occurred outside of the area covered by ticket No. 18390091.

8 Staff recommends that the Commission deny Johansen's request for hearing, contest of the violation, and application for mitigation.

### DISCUSSION AND DECISION

9 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.”<sup>1</sup> Excavators who violate these provisions are subject to penalties of up to \$10,000 per violation.<sup>2</sup>

- 10 As a preliminary matter, we deny the Company’s request for a hearing. The Commission will only grant a request for hearing if material issues of law or fact require consideration of evidence and resolution in hearing. Here, no issues of law or fact are in dispute. The photos submitted by the Company confirm that the Company did not mark the northern boundary of its excavation site with white paint. As a result, the boundary is only described in the dig ticket. The Company provided dig ticket No. 18390091, which indicated an excavation area from ROW to ROW. The photos submitted by the Company show that the damage incident occurred outside of the ROW. The Company admits this in its narrative. Therefore, the location where the damage incident occurred was not covered by dig ticket No. 18390091 and the Company should have requested a dig ticket for the location where the damage incident occurred before it began excavation.
- 11 The Company and Staff agree, however, that the photos submitted by the Company show that the gas lateral had not been marked in the excavation area described on dig ticket No. 18390091. The Company’s argument that PSE’s failure to locate the gas lateral inside the excavation area covered by dig ticket No. 18390091 is only somewhat persuasive. Had the gas lateral inside the ROW been marked as required by dig ticket No. 18390091, it is possible that the Company would have been more aware of the potential for striking the gas lateral outside of the ROW. But this argument fails to exonerate the Company for its decision to excavate in an area not covered by dig ticket No. 18390091. That decision led directly to the damage incident.
- 12 The facts are undisputed, and the law is clear. Accordingly, the Company’s request for a hearing is denied. The Commission also denies the Company’s contest of the violations. The undisputed facts demonstrate that the Company failed to obtain a dig ticket and utility locate prior to excavating outside of the ROW on October 11, 2018. The Company has thus violated the law.
- 13 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

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<sup>1</sup> RCW 19.122.030(5).

<sup>2</sup> RCW 19.122.055(1)(a).

convince the Commission that a lesser penalty will be equally or more effective in ensuring the company's compliance.<sup>3</sup>

- 14 The Commission determines that the information submitted by the Company and agreed to by Staff warrants suspension of the penalty, but not mitigation. Companies that dig without first obtaining an underground utility locate 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 valid dig ticket for the area prior to performing an excavation. We determine that mitigation of the penalty amount is not appropriate in this circumstance because of these factors. Accordingly, we find that the Commission properly penalized Johansen for damaging a natural gas pipeline.
- 15 We find, however, that the information provided by the Company provides context for the circumstances surrounding the damage incident. Although the Company was responsible for excavating outside of the ROW authorized by dig ticket No. 18390091, the gas lateral that was struck was not marked even inside of the area authorized for excavation. While this does not relieve the Company from its responsibility to excavate only in areas covered by a valid dig ticket, we believe that these circumstances warrant suspension of the penalty amount because the gas lateral that existed inside the ROW was not marked.
- 16 We consider the Company's demonstrated history of compliance, which includes more than 780 utility locate calls without any violations since its first alleged violation in December of 2015, when deciding whether reduced or suspended penalties is appropriate. In this instance, we determine that the circumstances of this case and the compliance history of the Company warrant suspension of the penalty amount subject to certain conditions.
- 17 We find it appropriate, therefore, to suspend the \$1,000 penalty amount in its entirety and then waive it after two years from the effective date of this Order subject to the following condition: the Company must not have any repeat violations for failing to mark its excavation area with white paint or failing to obtain a valid dig ticket for the area it is excavating.

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

**ORDER**

THE COMMISSION ORDERS:

- 18 (1) Johansen Excavating, Inc. aka Johansen Construction Company, Inc.'s request for  
a hearing is DENIED.
- 19 (2) Johansen Excavating, Inc. aka Johansen Construction Company, Inc.'s contest of  
the violations is DENIED.
- 20 (3) Johansen Excavating, Inc. aka Johansen Construction Company, Inc.'s request for  
mitigation is DENIED.
- 21 (4) The \$1,000 penalty amount is suspended in its entirety for two years and then  
waived thereafter subject to the condition in Paragraph 17.

DATED at Lacey, Washington, and effective August 12, 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.**