

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

BEHNKE CONSTRUCTION

In the amount of \$1,000

DOCKET DG-190369

ORDER 01

DENYING CONTEST OF
VIOLATION; DENYING
MITIGATION

BACKGROUND

- 1 On June 18, 2019, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment DG-190369 against Behnke Construction (Behnke or Company) in the amount of \$1,000, 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 before excavating on December 5, 2018.
- 2 On July 12, 2019, Behnke filed a letter with the Commission contesting the violation, claiming that the Commission was confusing Behnke with another company called “Behnke and Sons.” However, Behnke next states in its letter that the gas line had been improperly installed and if it had been installed correctly, Behnke would not have hit the gas line. Behnke claimed to have many pictures showing that the gas line was improperly installed, but attached no pictures with its letter. The letter makes no request for a hearing and no request for mitigation.
- 3 On July 29, 2019, Commission staff (Staff) filed a response recommending the Commission deny the Company’s contest of the violation. Staff explained that part of its investigation included a review of a reports submitted by Puget Sound Energy (PSE), another from PSE’s Gas First Response team, and a third from PSE’s contract locator. All reports identified Behnke Construction as the party responsible for the damage on December 5, 2018. Staff recommends that the Commission not schedule a hearing because the Company presented no new evidence. In its response, Staff notes that even if the line were improperly installed, Washington law, which “authorizes a civil penalty for

failing to notify the one-number locator service if damages occur, requires only that an underground natural gas facility is damaged without providing the proper notice to the one-call service to be considered a violation.”

DISCUSSION AND DECISION

- 4 RCW 19.122.030(2) requires excavators to provide notice “to a one-number locator service not less than two business days and not more than ten business days before the scheduled date for commencement of excavation, unless otherwise agreed by the excavator and facility operators.” 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
- 5 As a preliminary matter, we determine that no hearing is justified in this matter. While the Penalty Assessment explained that the Company could request a hearing to contest the violation, the Company did not request a hearing. The Penalty Assessment advised the Company that a request for hearing will only be granted 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 Company tacitly admits that it hit the gas line in question, defending itself only by asserting without supporting documentation that the gas line was improperly installed. The Company offers no new facts to suggest that it had a valid dig ticket covering its excavation. The facts, therefore, are undisputed, and the law is clear.
- 6 The Commission also denies the Company’s contest of the violation. The undisputed facts demonstrate that the Company struck a natural gas line on December 5, 2018, when it did not have a valid dig ticket. The Company has thus violated the law.
- 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

¹ RCW 19.122.030(5).

² 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.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. It is the Company's responsibility to provide adequate notice and secure a valid dig ticket covering the area prior to performing any excavation. Accordingly, we find that the Commission properly penalized Behnke for damaging a gas pipeline, and conclude that the Company's request for mitigation should be denied.

ORDER

THE COMMISSION ORDERS:

- 9 (1) Behnke Construction's contest of the violation is DENIED.
- 10 (2) Behnke Construction's request for mitigation is DENIED.
- 11 (3) Behnke Construction is assessed a penalty of \$1,000. Behnke Construction must either pay the \$1,000 penalty or file jointly with Commission staff a proposed payment arrangement by September 2, 2019.

DATED at Lacey, Washington, and effective August 19, 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

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

Commission review of this order no later than 14 days after the date the decision is posted on the Commission's website.