

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET DG-190738
S&J CREASEY BULLDOZING, INC.	ORDER 01
in the amount of \$1,000	DENYING MITIGATION

BACKGROUND

- 1 On October 8, 2019, the Washington Utilities and Transportation Commission (Commission) assessed a \$1,000 penalty (Penalty Assessment) against S&J Creasey Bulldozing, Inc., (S&J Creasey or Company) for one violation of RCW 19.122.030(2) for failing to request a utility locate prior to performing an excavation and damaging an underground natural gas facility.
- 2 On October 24, 2019, S&J Creasey filed an application for mitigation (Application) requesting the Commission reduce the penalty based on the written information provided. The Company admits the violation occurred, claiming that “property owner and developer Sean Wilson” had informed the Company that utility locates had been requested, and instructed it to proceed with work.
- 3 On November 12, 2019, Commission staff (Staff) filed a response recommending the Commission deny the Application.

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” 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 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

6 Here, the penalty is appropriate for a first-time violation because of the potential safety risks posed by damage to gas pipelines. 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. RCW 19.122.030 explicitly states that it is the excavator's duty to notify facility operators by means of a one-number locator service. As Staff notes in its response, even if the property owner had called in the utility locate request, the Company was independently required by RCW 19.122.030(2) to obtain its own locate prior to commencing excavation.

7 Because this was the Company's first violation, the Commission assessed a penalty of \$1,000, rather than the full \$10,000 penalty allowed by statute. This is the Commission's standard practice for first time violations of this type. In addition, the Company failed to introduce any new information that would warrant mitigation of the penalty. In light of these circumstances, the Commission finds that the penalty is appropriate and concludes that the Company's request for mitigation should be denied.

ORDER

THE COMMISSION ORDERS THAT:

- 8 (1) S&J Creasey Bulldozing, Inc.'s request for mitigation is DENIED.
- 9 (2) S&J Creasey Bulldozing, Inc. must either file jointly with Staff a proposed payment plan or pay the \$1,000 penalty by December 4, 2019.

DATED at Lacey, Washington, and effective November 21, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK L. JOHNSON
Executive Director and Secretary

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

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.