

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

<p>In the Matter of a Penalty Assessment Against DRG CONSTRUCTION, INC. in the amount of \$2,000</p>	<p>DOCKET DG-200135 ORDER 01 GRANTING MITIGATION SUBJECT TO CONDITIONS</p>
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BACKGROUND

- 1 On March 11, 2020, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment DG-200135 against DRG Construction, Inc., (DGR Construction or Company) in the amount of \$2,000, alleging two violations of RCW 19.122.055 for failing to provide the required notice to a one-number locator service before excavating and causing damage to an underground natural gas facility, as follows:
 - \$1,000 penalty for one violation of RCW 19.122.055 that occurred on September 4, 2018; and
 - \$1,000 penalty for one violation of RCW 19.122.055 that occurred on July 29, 2019.
- 2 On March 25, 2020, DGR Construction filed an application for mitigation, requesting a decision based on the written information provided. The Company admits the violations occurred, but requests the penalty be deferred or forgiven because it would create a financial hardship due to circumstances created by the COVID-19 pandemic and its impact on the Company’s small business.
- 3 On March 30, 2020, Commission staff (Staff) filed a response recommending the Commission grant DGR Construction’s request for mitigation and modified the recommended penalty conditions. Staff supports suspending the entire penalty amount due to the economic uncertainties created by the COVID-19 pandemic, and notes the Company was responsive to Staff’s requests for information and phone calls.
- 4 Staff recommends that the Commission suspend the entire \$2,000 penalty for a period of one year, subject to the conditions that: (1) the Company incurs no further violations of RCW 19.122 within 12 months of the date of this Order; and (2) Company management and field crew responsible for excavation complete Dig Safe Training provided through

the National Utility Contractors Association (NUCA) within 12 months of the date of this Order.

DISCUSSION AND DECISION

- 5 RCW 19.122.055(1)(a) provides, 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 up to \$10,000 for each violation. Here, the Commission assessed a reduced penalty of \$2,000 because Staff determined it was sufficient to deter the Company from committing future violations.
- 6 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.¹ In this instance, DRG Construction explained that the penalty would create a financial hardship because of the economic impacts of the COVID-19 pandemic.
- 7 We agree with Staff's recommendation and recognize that the Company is facing unprecedented conditions due to the COVID-19 pandemic. Therefore, the Commission will suspend the entire \$2,000 penalty for a period of one year, subject to the conditions outlined in paragraph 4, above. We modify Staff's recommendation to impose one additional condition: the Company must provide verification to Commission Staff that it completed NUCA training with five days of completion.
- 8 In any enforcement proceeding, the Commission's goal is to obtain compliance, not create an insurmountable financial burden for a small business. Accordingly, we find that suspending the entire penalty subject to conditions is appropriate given the Company's responsiveness and current financial situation, which was created by circumstances beyond its control. We find that the modified conditions will allow the Company to avoid any financial burden if it complies with RCW 19.122 for the next 12 months and attends required training, which will educate the Company about Washington's dig law in an effort to prevent future violations.

ORDER

THE COMMISSION ORDERS:

¹ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013) at ¶19.

- 9 (1) DRG Construction, Inc.'s, request for mitigation is GRANTED, in part, and the \$2,000 penalty is suspended for a period of one year, subject to the following conditions: (1) DRG Construction, Inc., incurs no further violations of RCW 19.122 within 12 months of the date of this Order; (2) DRG Construction, Inc., management and field crew responsible for excavation must complete Dig Safe Training provided through the National Utility Contractors Association (NUCA) within 12 months of the date of this Order, and (3) DRG Construction, Inc., must provide to Commission Staff verification of training within five days of completion.
- 10 (2) The Commission retains jurisdiction over the parties to this proceeding to effectuate the terms of this Order.

The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Lacey, Washington, and effective April 27, 2020.

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(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.