



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION
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Dec. 16, 2016

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. Westward Hoe Construction, Inc.*
Commission Staff's Response to Mitigation Request.
Docket D-161117

Dear Mr. King:

On Nov. 10, 2016, the Utilities and Transportation Commission (commission) issued a \$16,000 Penalty Assessment in Docket D-161117, against Westward Hoe Construction, Inc. (Westward Hoe) for four violations of RCW 19.122. These violations were based on a referral from the Washington State Dig Law Safety Committee (Safety Committee).

The Safety Committee originally recommended that \$15,000 of the total \$16,000 penalty amount should be deferred and ultimately waived on the conditions that; (1) Westward Hoe owners and all crews complete National Utility Contractor Association (NUCA) Dig Safe Training within 90-days of the commission order and; (2) Westward Hoe had no further violations of RCW 19.122.030 within 12-months of the commission order. If Westward Hoe failed to comply with either of these conditions then the \$15,000 deferred penalty would become immediately due and payable.

Staff agreed with the Safety Committee's decision on the violation, but disagreed with the penalty amount. Based on the number of violations and the length of time over which they occurred, and Westward Hoe's positive history of calling for utility locates prior to performing work, staff believes a more significant penalty was justified to encourage future compliance. Staff recommended that \$6,000 of the penalty be immediately enforced and the remaining \$10,000 be deferred for one year on the same conditions the Safety Committee recommended, both company attended training and no further violations of RCW 19.122.030.

On Nov. 23, 2016, the commission received an application from Westward Hoe requesting mitigation of the penalty. Westward Hoe asked for a hearing to present evidence to an

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administrative law judge for a decision. The only information Westward Hoe provided in the application was that they were requesting a hearing to provide facts about the situation.

On Nov. 28, 2016, the commission issued a Notice Denying Request for Hearing and Notice of Opportunity to File Written Response to Westward Hoe. The reason for the denial was that Westward Hoe did not provide any written explanation or documentation to support its request for a hearing. The commission did grant Westward Hoe the opportunity to file a written response to explain how the violations occurred and support why they feel the penalty should be reduced.

On Dec. 2, 2016, the commission received a written response from Westward Hoe owner Pat Damery. Mr. Damery stated he believed all he had to do was check the box requesting a hearing and he would be provided the opportunity to present his case. Mr. Damery also provided an explanation as to why the violations occurred. He stated that it was a miscommunication between a previous contractor, his customer, and his crew about when they could begin working. Mr. Damery requested that the commission reconsider the increased monetary portion of the original penalty recommendation and allow his company to attend Dig Safe training.

Staff reviewed the original case file and the information provided by Mr. Damery in his written response to the commission. In initially recommending that the penalty be increased, staff relied on the facts that the four violations committed by Westward Hoe occurred over an eight-month period time after the company was made aware of the alleged violations by the complaints that were filed with the Safety Committee. Staff also researched Westward Hoe's history of requesting utility locates and found that during the approximately eight-month period of time from their first violation on Sept. 30, 2015, until their fourth violation on May 24, 2016, Westward Hoe requested 57 other utility locates. Of these locate requests, 44 of them were for job sites located in the Lacey, WA area where the violations occurred.

Staff believes that the violations were the result of negligence or miscommunication on the company's part, as opposed to lack of knowledge of the requirements of Washington state's Dig Law. Staff does not believe that the information provided by Mr. Damery regarding the reasons the violations occurred warrant a reduction in the penalty amount.

During this investigation, the company was very professional and cooperative with staff while also expressing their concern that the financial burden of paying a \$6,000 penalty in one payment would be difficult. Staff recommends allowing a payment plan to be set up to accommodate the company.

Staff recommends that the commission deny Westward Hoe's mitigation request and offer a six-month payment plan of \$1,000 per month for a total penalty of \$6,000, paid in full by June 30, 2017.

Sincerely,

Alan E. Rathbun
Pipeline Safety Director