

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET DG-180169
ROCK PLACING, CO.	ORDER 01
in the amount of \$8,500	IMPOSING AND SUSPENDING PENALTY, IN PART

BACKGROUND

- 1 On March 5, 2018, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment DG-180169 against Rock Placing, Co. (Rock Placing or Company) in the amount of \$8,500, alleging three violations of RCW 19.122.030(1)(a) for failing to request a utility locate prior to performing an excavation on March 23, 2017, June 26, 2017, and July 25, 2017.
- 2 On March 12, 2018, Rock Placing filed an application for mitigation, admitting the violations and requesting a decision based on the written information provided. Rock Placing provided the following explanation for the violation: “Over the years you shall see our locate requests have gotten significantly higher. In two cases we were asked to install walls within 24 hours of contact. The other job had a locate but we did not request [it]. We have learned our lesson moving forward, but we do feel \$8,500 is a bit excessive with our previous 17 years of doing business prior to the above penalties.”
- 3 On March 23, 2018, Commission staff (Staff) filed a response recommending the Commission suspend a portion of the penalty subject to conditions. In its response, Staff explained that it spoke with Company representative Ryan Yeoman who stated that the Company has made significant improvements to its damage prevention practices and that it is taking a very proactive approach to employee safety. On the basis of this conversation, Staff believes that the Company is taking the necessary steps to prevent future violations from occurring. Accordingly, Staff recommends that the Commission suspend \$2,500 of the penalty for one year, and then waive it, subject to the following conditions: (1) all Rock Placing field crew involved in excavation, including Company management, attend Dig Safe training provided through the National Utility Contractors Association (NUCA), within 12 months of the date of this Order; and (2) Rock Placing commits no further violation of RCW 19.122 within the next 12 months.

DISCUSSION AND DECISION

- 4 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.”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 convince the Commission that a lesser penalty will be equally or more effective in ensuring the company’s compliance.³
- 6 Here, the Company did not introduce any new information that would warrant mitigation of the penalty. 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 incidents at issue could have resulted in a fire or an explosion. The Company should have obtained a utility locate regardless of whether the customer requested the job be performed within 24 hours, or whether another contractor previously obtained a utility locate at the same site. Accordingly, we find that the penalty is appropriate in light of the circumstances, and conclude that the Company’s request for mitigation should be denied.
- 7 However, we agree with Staff that suspending a portion of the penalty is appropriate here. The Commission considers several factors in determining whether to suspend a portion of a penalty, including whether the company has taken specific actions to remedy the violations and avoid the same or similar violations in the future, such as purchasing new technology, making system changes, or training company personnel.⁴ Another factor we

¹ RCW 19.122.030(5).

² RCW 19.122.055(1)(a).

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

⁴ *Id.* at ¶20.

consider is whether the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties.⁵

- 8 In this case, Staff believes that the Company is taking the necessary steps to prevent future violations from occurring. We agree. The Company has improved its damage prevention practices, and suspending a portion of the penalty with the conditions proposed by Staff will both increase compliance and provide a strong incentive to avoid violations in the future. Accordingly, we suspend a \$2,500 portion of the penalty for one year, and then waive it, subject to the following conditions: (1) all Rock Placing field crew involved in excavation, including Company management, must attend Dig Safe training provided through the National Utility Contractors Association (NUCA), within 12 months of the date of this Order; and (2) Rock Placing commits no further violation of RCW 19.122 within the next 12 months. If the Company fails to comply with either of the conditions, the suspended penalty will become immediately due and payable without further Commission order, in addition to any new penalties that the Commission might assess for addition violations.

ORDER

THE COMMISSION ORDERS THAT:

- 9 (1) Rock Placing, Co.'s request for mitigation is DENIED.
- 10 (2) Rock Placing Co. is assessed a penalty of \$8,500. A \$2,500 portion of the penalty will be suspended for a period of one year from the date of this Order, and then waived, subject to the following conditions:
- a) All Rock Placing Co. field crew involved in excavation, including Company management, must attend National Utility Contractor Association (NUCA) Dig Safe Training within 1 year of the effective date of this Order.
 - b) Rock Placing Co. must not incur any additional violations of RCW 19.122.

⁵ *Id.*

- c) Rock Placing Co. must either pay the \$6,000 portion of the penalty that is not suspended, or file jointly with Staff a proposed payment arrangement, within 20 days of the effective date of this Order.
- 11 (3) If the Rock Placing Co. fails to comply with any of the conditions, the suspended penalty will become immediately due and payable without further Commission order.

DATED at Olympia, Washington, and effective April 27, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
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.