

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

VASILIIY’S CONSTRUCTION PLUS,
LLC,

in the amount of \$6,000

DOCKET D-200170

ORDER 01

DENYING REQUEST FOR HEARING;
DENYING CONTEST OF VIOLATION;
DENYING MITIGATION

BACKGROUND

- 1 On March 11, 2020, the Washington Dig Law Safety Committee (Safety Committee) filed with the Washington Utilities and Transportation Commission (Commission) its recommendation for penalties against Vasiliiy’s Construction Plus, LLC, (Vasiliiy’s Construction or Company) for violations of RCW 19.122. The Safety Committee found that Vasiliiy’s Construction violated RCW 19.122.030(2) by failing to provide notice to a one-number locating service prior to commencing excavation on three occasions.
- 2 The Safety Committee recommended penalties of \$1,000 for the first violation, \$5,000 for the second violation, and \$5,000 for the third violation, for a total penalty of \$11,000. The Safety Committee further recommended that the Commission offer to suspend \$5,000 of the \$11,000 penalty amount if the owners of Vasiliiy’s completed National Utility Contractor Association (NUCA) Dig Safe Training and the Company incurred no additional dig law violations in the next 12 months.
- 3 On July 28, 2020, the Commission issued a penalty assessment (Penalty Assessment) against Vasiliiy’s Construction in the amount of \$6,000, alleging two violations of RCW 19.122.030(2) for failing to request utility locates prior to performing an excavation on April 15 and May 3, 2019. The Commission found that there was insufficient evidence to uphold one of the violations recommended by the Safety Committee. The Penalty Assessment offered the Company the option to suspend, and ultimately waive, a \$2,000 portion of the penalty subject to the conditions that: a) Owners of Vasiliiy’s Construction attend Dig Safe training provided through the National Utility Contractor Association (NUCA) within 12 months of the date of the Penalty Assessment; and b) the Company incur no further violations of RCW 19.122 within 12 months from the date of the Penalty Assessment.

4 On August 13, 2020, Vasilii's Construction filed a response contesting the violation and requesting a hearing. Vasilii's Construction failed to include any evidence or explanation to justify consideration of its request.

5 On September 22, 2020, Commission staff (Staff) filed a response recommending the Commission deny the Company's request for hearing. In its response, Staff notes that Vasilii's Construction has not introduced any new information that requires consideration and resolution in hearing. Staff further states that the Company did not attend, or present any evidence during, the Safety Committee review that led to the Penalty Assessment. Likewise, the Company did not provide Staff with any information during Staff's investigation.

DISCUSSION AND DECISION

6 RCW 19.122.030(2) requires excavators to "provide the notice required by subsection (1) of this section 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

7 As a preliminary matter, we deny the Company's request for 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 provided no evidence to refute the evidence presented by Staff. The facts, therefore, are undisputed, and the law is clear. Accordingly, the Company's request for a hearing is denied.

8 The Commission also denies the Company's contest of the violations. The undisputed facts demonstrate that the Company failed to obtain a utility locate prior to performing an excavation on April 15, 2019 and failed to obtain a utility locate at least two business days prior to commencing excavation on May 3, 2019. The Company has thus violated the law.

9 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

¹ RCW 19.122.030(5).

² RCW 19.122.055(1)(a).

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

10 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 incident at issue could have resulted in a fire or an explosion. It is the Company's responsibility to secure a utility locate prior to performing an excavation. Accordingly, we find that the Commission properly penalized Vasilij's Construction for excavating without a valid utility locate request and conclude that the Company's request for mitigation should be denied. Vasilij's Construction must take one of the following actions within 10 days of the effective date of this Order:

- Pay the \$6,000 penalty.
- Pay \$4,000 of the penalty amount and notify the Commission that the Company accepts the Commission's offer to suspend, and ultimately waive, the remaining \$2,000 portion of the penalty subject to the conditions that (1) Vasilij's Construction's owners attend Dig Safe training provided by NUCA within 12 months of the effective date of this order and submit documentation of the Company's attendance within five days of completion, and (2) Vasilij's Construction incurs no additional violations of RCW 19.122 within 12 months of the effective date of this Order.

ORDER

THE COMMISSION ORDERS THAT:

- 11 (1) Vasilij's Construction Plus, LLC's request for hearing is DENIED.
- 12 (2) Vasilij's Construction Plus, LLC's contest of the violation is DENIED.

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

- 13 (3) Vasily's Construction Plus, LLC, must either pay the \$6,000 penalty or take the alternative action described in paragraph 10, above, within 10 days of the effective date of this Order.

DATED at Olympia, Washington, and effective October 13, 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.