

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

STEVE RUHNKE CONSTRUCTION,
INC.

in the amount of \$16,000

DOCKET DG-200422

ORDER 01

DENYING CONTEST OF VIOLATIONS;
DENYING MITIGATION

BACKGROUND

- 1 On August 10, 2020, the Washington Utilities and Transportation Commission (Commission) issued a Penalty Assessment against Steve Ruhnke Construction, Inc., (Steve Ruhnke Construction or Company) in the amount of \$5,000 for one violation of RCW 19.122.055. The Penalty Assessment alleges that the Company struck and damaged an underground natural gas facility owned by Puget Sound Energy (PSE) while excavating without first submitting a valid request to locate underground utilities.
- 2 On August 27, 2020, Steve Ruhnke Construction filed an application for mitigation, contesting the violation and requesting a decision based on the information provided. In its application, the Company stated: “We have checked every job record, and we have checked with all foreman to double check. Steve Ruhnke Construction INC did not perform ANY work at this address. Please go back to your records and find the correct company that committed this infraction because it was not us. If you still believe it was Steve Ruhnke Construction for any reason, we respectfully ask that you provide us with evidence so we can research this.”
- 3 On September 3, 2020, Commission staff (Staff) filed a response recommending the Commission deny the Company’s request for mitigation. Staff provided the following information:

Staff’s investigation of this damage incident began following a damage report submitted by Puget Sound Energy (PSE), which identified Steve Ruhnke Construction as the excavator that caused the damage incident on October 31, 2019. The report noted that the excavator dug after its valid dig ticket expired and did not have a valid dig ticket when it caused the damage. Staff obtained additional information from PSE, including its gas first responders (GFR) report and a report made by a responder from the contract locator for PSE. Both reports

indicate that Steve Ruhnke Construction was responsible for the damage incident, and the GFR report notes utility locate request 19480721 as the related dig ticket request. This dig ticket was requested on October 31, 2019, for 4804 240th Pl SE, Sammamish, approximately 45 minutes after the damage incident occurred.

Staff's investigation found five additional utility locate requests made by the company for excavation at this address requested between March 27, 2019, and August 27, 2019, which all expired prior to the damage incident: 19110541, 19203473, 19298170, 19318210, 19375304. The utility locate requests made by the Company prior to and immediately following the damage incident demonstrate that the Company performed work at the location before and after the damage incident, and the reports and documentation obtained from PSE demonstrate that Steve Ruhnke Construction caused the damage to the underground natural gas facility on October 31, 2019.

- 4 On September 23, 2020, the Company replied to Staff's response and provided the following explanation:

The contractor that did the utility damage is SRC Land Development INC. ... You can easily verify this information by contacting the Foreman, Mike Dickmeyer, of SRC Land Development INC, who is taking responsibility for this utility damage. You can also look up locate tickets and you will see a history at this location of SRC Land Development INC. You can also verify this information by contacting the customer CR Home Builders and they will tell you that the excavating company on this job is in fact SRC Land Development INC, not Steve Ruhnke Construction. PSE also sent an invoice for repairs to Steve Ruhnke Construction, incorrectly. I spoke with their claims department and Heather, the investigator, is re-billing this to SRC Land Development INC. And SRC Land Development INC will also pay this bill because, again, SRC Land Development caused the damage.

- 5 Also on September 23, 2020, Staff responded to the Company's reply, as follows:

Staff followed up with [the] information [provided] and attempted to call the foreman at the phone number provided on September 9, 2020. Staff discovered the phone number was no longer in service, so could not verify the information provided by Steve Ruhnke Construction. Additionally, Staff contacted PSE on September 9, 2020, and learned that Steve Ruhnke Construction was treble billed for the damage and paid the bill in full on December 26, 2019. PSE also informed staff that a new note had been entered into their system on September 9, 2020,

regarding the bill for the damage, stating that PSE received a call that day from somebody who asked that the bill be updated and put into the name of SRC Land Development INC instead of Steve Ruhnke Construction.

Staff also obtained information from the Washington Department of Revenue (DOR) and Labor & Industries (L&I) websites, and found that while Steve Ruhnke Construction and SRC Land Development, INC have different Washington Unified Business Identifiers, both companies share the same business address, phone number, and president, Steven Edward Ruhnke.

Finally, the one-call dig ticket database does not have record of a request made in 2019 for the excavation site by SRC Land Development, INC, prior to December 2, 2019, 33 days after the damage incident. The database does indicate, however, that Steve Ruhnke Construction submitted five utility locate requests for the address of the damage incident in 2019 prior to the damage incident, as well as one request on the date of the damage incident.

DISCUSSION AND DECISION

- 6 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.” RCW 19.122.030(2) requires excavators to provide the required 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, unless otherwise agreed by the excavator and facility operators.” RCW 19.122.055(1)(a) prohibits excavators from excavating “until all known facility operators have marked or provided information regarding underground facilities.” Excavators who violate these provisions are subject to penalties of up to \$10,000 per violation.¹ Here, the Commission assessed a reduced penalty of \$5,000 for the violation, which is the Company’s fourth violation in five years.
- 7 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 19.122.055(1)(a).

convince the Commission that a lesser penalty will be equally or more effective in ensuring the company's compliance.²

8 As a preliminary matter, we deny the Company's contest of the violation. All relevant records – including PSE's records and records obtained from the one-call dig ticket database – show that Steve Ruhnke Construction both obtained multiple dig tickets for the location where the damage incident occurred and subsequently remitted payment for the damage to PSE in December 2019. The Company provided no documentation to support its claim that SRC Land Development, Inc., which is governed by the same individual and operates from the same office, was responsible for the damage. In fact, the information provided in the Company's reply was refuted by PSE's records and dig ticket records. In addition, the Company's failure to acknowledge that it shares both an office and a corporate officer with SRC Land Development, Inc., borders on deception. Accordingly, we deny the Company's contest of the violation and find that the evidence supports the facts as set forth by Staff in the Penalty Assessment.

9 We also find that Steve Ruhnke Construction failed to introduce any new information that would warrant further 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. As Staff notes in its response, the Company has a long history of obtaining locates and is aware of its legal obligations. The Company also has a significant history of violating the law. Both factors weigh against mitigation. Accordingly, we agree with Staff's recommendation and conclude that the Company's request for mitigation should be denied.

ORDER

THE COMMISSION ORDERS THAT:

- 10 (1) Steve Ruhnke Construction, Inc.'s request for mitigation is DENIED.
- 11 (2) Steve Ruhnke Construction, Inc. is assessed a penalty of \$5,000.

² Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013) at ¶19.

- 12 (3) Steve Ruhnke Construction, Inc., must either pay the \$5,000 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement within 10 days of the effective date of this Order.

DATED at Lacey, Washington, and effective October 6, 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.