

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET DG-220906
T.E. BRIGGS CONSTRUCTION CO.,	ORDER 01
in the amount of \$1,000	ORDER DENYING CONTEST OF VIOLATION

**BACKGROUND**

- 1 On January 4, 2023, the Washington Utilities and Transportation Commission (Commission) issued a Penalty Assessment against T.E. Briggs Construction Co. (T.E. Briggs or Company) in the amount of \$1,000, alleging one violation of RCW 19.122.055(1)(a) for failing to notify a one-number locator service prior to performing an excavation and subsequently causing damage to an underground gas facility. The Penalty Assessment offered T.E. Briggs the opportunity to suspend \$800 of the penalty on the condition that Company field crew and supervisors successfully complete National Utility Contractors Association (NUCA) Dig Safe training within 90 days, and the Company incur no additional dig law violations within 12 months.
- 2 On January 9, 2023, T.E. Briggs responded to the Penalty Assessment, contesting the violation and requesting that the Commission make a determination based on the information provided. T.E. Briggs included the following explanation with its request: “Attached Valid Locate #22283495.” The Company attached a locate ticket for the date the damage occurred for the location “entire street width of 112<sup>th</sup> Pl from N P/L to S P/L from 132<sup>nd</sup> Ave. NE going E to end of cul de sac.”
- 3 On January 20, 2023, Commission staff (Staff) filed a response recommending the Commission deny the Company’s contest of the violation. In its response, Staff notes that T.E. Briggs has not introduced any new information. Staff explained that the information that T.E. Briggs provided with its application is the same information that was provided during the investigation and “does not explain how the damage location was within the scope of the locate ticket, while Staff’s investigation indicated that the damage location was more than 20 feet outside of the scope of the locate ticket that was provided” Staff states that it reached out to T.E. Briggs to request additional information from the Company to support its claim of the damage falling within the scope of the ticket, but did not receive a response.

4 Staff further explained that T.E. Briggs has previously received three warning letters from the Commission, which included information about the requirements of RCW 19.122. Staff does not support any mitigation of the penalty, but recommends the Commission offer the Company the same opportunity to suspend an \$800 portion of the penalty, subject to conditions, that was offered in the Penalty Assessment.

### DISCUSSION AND DECISION

5 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.”<sup>1</sup> Excavators who violate these provisions are subject to penalties of up to \$10,000 per violation.<sup>2</sup>

6 The Commission denies the Company’s contest of the violations. The disputed facts are those that were fully considered in the original investigation, and the Company has provided no new information. While the Company provided a valid locate claim for the date of the damage, it provided no explanation or challenge to Staff’s determination that the damage was 20 feet outside the area covered by the locate ticket.

7 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 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.<sup>3</sup>

8 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 or dig outside the boundaries covered by a locate ticket, 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, and it may not extrapolate from an existing ticket to

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<sup>1</sup> RCW 19.122.030(5).

<sup>2</sup> RCW 19.122.055(1)(a).

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

surrounding areas not covered by the locate. Accordingly, we find that the Commission properly penalized T.E. Briggs for damaging a pipeline and conclude that the Company's request for mitigation should be denied.

9 We also agree with Staff's recommendation to reiterate the offer to suspend an \$800 portion of the penalty subject to the conditions listed in the Penalty Assessment. Accordingly, T.E. Briggs must take one of the following actions within 10 days of the effective date of this Order:

- Pay the \$1,000 penalty.
- Pay \$200 of the penalty amount and notify the Commission that the Company accepts the Commission's offer to suspend and ultimately waive, the remaining \$800 portion of the penalty subject to the conditions that (1) T.E. Briggs supervisors and field crew attend NUCA Dig Safe Training within 90 days of the effective date of this order and submit documentation of attendance within five days of completion, and (2) T.E. Briggs incurs no additional violations of RCW 19.122 within 12 months of the effective date of this Order.

### ORDER

THE COMMISSION ORDERS THAT:

- 10 (1) T.E. Briggs Construction Co.'s contest of the violation is DENIED.
- 11 (2) T.E. Briggs Construction Co. must either pay the \$1,000 penalty or take the alternative action described in paragraph 9, above, within 10 days of the effective date of this Order.

DATED at Olympia, Washington, and effective February 16, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AMANDA MAXWELL  
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.**