

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against  WATTERSON EXCAVATION, INC.  in the amount of \$10,000	DOCKET DG-160164  ORDER 01  ORDER DENYING MITIGATION
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**BACKGROUND**

- 1 On May 9, 2016, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment DG-160164 against Watterson Excavation, Inc. (Watterson or Company) in the amount of \$10,000, alleging one violation of RCW 19.122.030(1)(a) for failing to request a utility locate prior to performing an excavation on May 28, 2015.
- 2 On May 27, 2016, Watterson filed an application for mitigation and requested a hearing. The Company admits the violation occurred, but claims it made substantial policy and procedure changes to ensure utility locates are secured prior to performing excavations going forward.
- 3 On June 21, 2016, the Commission conducted a brief adjudicative proceeding before administrative law judge Rayne Pearson.
- 4 Brad Boren, general manager, testified for Watterson. Mr. Boren acknowledged that the May 28, 2015, violation is the Company's fourth damage incident, but explained that the Company has made substantial changes to prevent repeat violations, including employing a dedicated staff person to obtain locates.
- 5 Anthony Dorrough, pipeline safety engineer, testified on behalf of Commission staff (Staff). Mr. Dorrough noted that the Company received a \$4,000 penalty on February 26, 2015, for three previous damage incidents. The violation at issue occurred just 91 days later. Accordingly, Staff recommends the maximum penalty of \$10,000 because this is a repeat violation and the Company was apparently undeterred by the previous penalty.
- 6 Brett P. Shearer, Assistant Attorney General, Olympia, Washington, represents Staff.<sup>1</sup> Brad Boren, General Manager, Enumclaw, Washington, represents Watterson.

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<sup>1</sup> In adjudications the Commission's regulatory staff participates like any other party, while the Administrative Law Judge or the Commissioners make the decision. To assure fairness, the Commissioners and the presiding administrative law judge do not discuss the merits of the proceeding

### DISCUSSION AND DECISION

- 7 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>2</sup> Excavators who violate these provisions are subject to penalties of up to \$10,000 per violation.<sup>3</sup>
- 8 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>4</sup>
- 9 Here, the Company did not introduce any new information at hearing 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. Although we appreciate the Company’s assurances of future compliance, penalties for repeat violations that may pose a serious risk to the public are not eligible for mitigation absent compelling circumstances. Accordingly, we find that the Commission properly penalized Watterson for damaging a gas pipeline and conclude that the Company’s request for mitigation should be denied. The Company may work with Staff to establish mutually agreeable payment arrangements to pay the \$10,000 penalty.

### ORDER

#### THE COMMISSION ORDERS THAT:

- 10 (1) Watterson Excavation, Inc.’s request for mitigation is DENIED.

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with regulatory staff or any other party without giving notice and opportunity for all parties to participate. See RCW 34.05.455.

<sup>2</sup> RCW 19.122.030(5).

<sup>3</sup> RCW 19.122.055(1)(a).

<sup>4</sup> Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013) at ¶19.

- 11* (2) Watterson Excavation, Inc. must either file jointly with Staff a proposed payment plan or pay the \$10,000 penalty by July 7, 2016.

DATED at Olympia, Washington, and effective June 23, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON  
Administrative Law Judge

Service Date: June 23, 2016

## NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and **seven (7)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: Steven V. King, Acting Executive Director and Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250