

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET DG-160907
NATE’S PLUMBING, INC.	ORDER 02
in the amount of \$1,000	ORDER AFFIRMING ORDER 01

BACKGROUND

- 1 On August 12, 2016, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment DG-160907 against Nate’s Plumbing, Inc. (Nate’s Plumbing or Company) in the amount of \$1,000, alleging one violation of RCW 19.122.030(1)(a) for failing to request a utility locate prior to performing an excavation on October 8, 2015.
- 2 On August 31, 2016, Nate’s Plumbing filed an application for mitigation, contesting the violation and requesting a hearing. On September 27, 2016, Commission staff (Staff) filed a response recommending the Commission deny the Company’s request for hearing. On September 30, 2016, the Commission entered Order 01, Order Denying Request for Hearing; Denying Contest of Violation; Denying Mitigation (Order 01).
- 3 On October 4, 2016, Nate’s Plumbing filed a request for review of Order 01. The Company contends that the Commission Secretary on delegated authority “failed to review that a Ticket [*sic*] had been issued to the contractor and only due to a scrivener [*sic*] error, the ticket (which was valid) was not transferred to Nate’s Plumbing. It is fairly routine for a contractor to get the ticket number, then transfer the number to the subcontractor.”

DISCUSSION AND DECISION¹

- 4 We affirm Order 01. Contrary to the Company’s contention, Order 01 considered the Company’s claim that it relied on the contractor’s facility locate notification and rejected that defense. So do we.
- 5 The statute, RCW 19.122.030, does not authorize a contractor to obtain a facility locate ticket and transfer it to the person who excavates. Rather, the *excavator* must “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.”² An “excavator” is “any person who engages *directly* in excavation.”³
- 6 The Company admitted in its August 25, 2016, request for hearing that it engaged directly in the excavation that resulted in damage to underground facilities. Notwithstanding the Company’s representation of what it believes is common practice, that statute requires Nate’s Plumbing – not the contractor – to mark the area to be excavated and to notify facility operators of the planned excavation through a one-number locator service prior to excavating. The Company concedes that it did not do so. The undisputed facts, therefore, demonstrate that Nate’s Plumbing violated RCW 19.122.030.
- 7 Nor do we find the circumstances warrant mitigation of the penalty amount. Staff previously provided technical assistance to Nate’s Plumbing on the requirements of the statute at issue here, and the Company thus was fully aware of its legal obligation.⁴ We find that \$1,000 provides the appropriate penalty for the violation and incentive to comply with the law in the future.

¹ The Commission exercises its discretion under WAC 480-07-110 to undertake review based on the written record, rather than through consideration at an open meeting as contemplated in WAC 480-07-904.

² RCW 19.122.030(1)(a).

³ RCW 19.122.020(10) (emphasis added).

⁴ We are also concerned with the Company owner’s conduct as described in Staff’s response to the request for hearing. We will not tolerate, much less reward, abusive behavior directed to our Staff.

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ORDER

THE COMMISSION ORDERS THAT:

- 9 (1) The Commission AFFIRMS and adopts Order 01 as its own.
- 10 (2) Nate's Plumbing, Inc., must pay the \$1,000 penalty no later than October 14, 2016.

DATED at Olympia, Washington, and effective October 7, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

ANN E. RENDAHL, Commissioner