

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET DG-160174
WOODLAND INDUSTRIES GENERAL CONTRACTING, INC.	ORDER 01
in the amount of \$2,000	ORDER DENYING MITIGATION

BACKGROUND

- 1 On April 18, 2016, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment DG-160174 against Woodland Industries General Contracting, Inc. (Woodland or Company) in the amount of \$2,000, alleging two violations of RCW 19.122.030(1)(a) for failing to request a utility locate prior to performing excavations on May 9, 2014, and September 21, 2015.
- 2 On April 28, 2016, Woodland filed an application for mitigation and requested a hearing. The Company admits the violations occurred, but claims that it believed its customer had secured utility locates on its behalf.
- 3 On June 21, 2016, the Commission conducted a brief adjudicative proceeding before administrative law judge Rayne Pearson.
- 4 Lee Rogers, general manager, testified for Woodland. Mr. Rogers explained that the May 9, 2014, violation occurred when the Company was cleaning up a demolition work site. Although Mr. Rogers claimed the Company was not using an excavator, he admitted that an employee hit a gas line when removing a bush from the ground. Mr. Rogers acknowledged that obtaining a utility locate might have prevented the damage, but explained that the Company did not obtain one because it was not contracted to perform an excavation.
- 5 Mr. Rogers further testified that the Company obtained a locate on June 19, 2015, for the site where the September 21, 2015, incident occurred, but failed to obtain a new locate prior to excavation. Mr. Rogers explained that Puget Sound Energy (PSE) did not identify any gas pipes at the site as a result of the June 19, 2015, locate, and, following the incident, stated it had no record of the gas pipe that Woodland damaged.
- 6 Scott Anderson, pipeline safety engineer, testified on behalf of Commission staff (Staff). Mr. Anderson explained that the Commission assessed a reduced penalty of \$1,000 per violation because these were first time violations. Staff believes penalties are appropriate

for first time violations because of the potential risk to public safety posed by damage to natural gas lines.

- 7 Brett P. Shearer, Assistant Attorney General, Olympia, Washington, represents Staff.¹
Lee Rogers, General Manager, Puyallup, Washington, represents Woodland.

DISCUSSION AND DECISION

- 8 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.”² Excavators who violate these provisions are subject to penalties of up to \$10,000 per violation.³

- 9 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.⁴

- 10 Here, the Company did not introduce any new information at hearing that would warrant mitigation of the penalty. In fact, Mr. Rogers’ testimony conflicted with the information the Company provided on its application for mitigation, and none of the explanations – relying on its customer, relying on an expired locate, or believing it was not required to obtain a locate – excuse the violations. It is ultimately the Company’s responsibility to timely secure utility locates prior to performing any form of excavation, which includes removing bushes from the ground. In addition, Staff noted at hearing that it had already considered the circumstances Mr. Rogers explained prior to recommending reduced penalties of \$1,000 per violation.

¹ 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 with regulatory staff or any other party without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

² RCW 19.122.030(5).

³ RCW 19.122.055(1)(a).

⁴ Enforcement Policy for the Washington Utilities and Transportation Commission, Docket A-120061 ¶19 (Jan. 7, 2013).

- 11 Companies that dig without first obtaining an underground utility locate are putting their employees, the public, and the facility operator's employees at risk. The damage incidents at issue could have resulted in a fire or an explosion. Accordingly, we find that the Commission properly penalized Woodland for damaging gas pipelines on two occasions, 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 \$2,000 penalty.

ORDER

THE COMMISSION ORDERS THAT:

- 12 (1) Woodland Industries General Contracting, Inc.'s request for mitigation is DENIED.
- 13 (2) Woodland Industries General Contracting, Inc. must either file jointly with Staff a proposed payment plan or pay the \$2,000 penalty by July 7, 2016.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

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:

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Washington Utilities and Transportation Commission
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