

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment)	DOCKET DG-144098
Against)	
)	ORDER 01
JEREMY KYSAR d/b/a BLADE)	
EXCAVATION)	ORDER DENYING MITIGATION
)	
in the amount of \$3,000)	
.....)	

BACKGROUND

- 1 On April 13, 2015, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment DG-144098 against Jeremy Kysar d/b/a Blade Excavation (Blade Excavation or Company) in the amount of \$3,000, alleging three violations of RCW 19.122.030(1)(a) for failing to request a dig ticket prior to performing an excavation on three separate occasions.
- 2 On May 1, 2015, Blade Excavation filed an application for mitigation, admitting two of the three violations and requesting a decision based on the written information provided. In its request, the Company states, “Violation #1 and violation #3 are the same incident. I do admit fault on #2 and #3.”
- 3 On June 10, 2015, Commission staff (Staff) filed an amended response recommending the Commission deny the Company’s request for mitigation. Staff explained that the Penalty Assessment contains a typographical error, and that the correct location for the third violation is 1634 Lucca Lane. The penalty assessment erroneously cites 1638 Lucca Lane as the address for both the first and third violations, although the incident dates are different. Because Blade Excavation actually damaged underground utilities on three separate occasions, Staff does not support a penalty reduction.
- 4 On June 11, 2015, the Commission issued a Notice of Opportunity to Respond to Staff’s Amended Response by June 17, 2015. Blade Excavation did not respond to the new information presented by Staff that distinguishes the first and third violations as separate incidents.

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DISCUSSION AND DECISION

- 5 RCW 19.122.055(1)(a) provides, in part, that any excavator who fails to notify a one-number locator service and causes damage to a hazardous liquid or gas facility is subject to a civil penalty of up to \$10,000 for each violation. Here, the Commission has assessed reduced penalties of \$1,000 per violation because these are first time violations.
- 6 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.¹
- 7 Here, penalties are appropriate for first-time violations because of the potential safety risks posed by damage to gas pipelines. As Staff noted in its response, companies that dig without first obtaining an underground utility locate are putting their employees, the public, and the facility operator's employees at risk. Any of the three damage incidents at issue could have resulted in a fire or an explosion. The Commission consistently assesses the maximum penalty for these types of violations. Blade Excavation has not introduced any new information or explained additional circumstances that would warrant a further penalty reduction. The Company states only that the location address is the same for the first and third violations, and thus the Commission erroneously imposed a penalty twice for the same violation. We disagree. As Staff explained, the address for the third violation cited in the Penalty Assessment contains a typographical error, and the Company reported – and the Commission properly penalized – three separate violations. Blade Excavation failed to respond to Staff's explanation of the error or otherwise dispute the third violation following a notice and opportunity to do so. Accordingly, we find that the Commission properly penalized Blade Construction for three violations and deny the Company's request for mitigation.

¹ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013) at ¶19.

ORDER

THE COMMISSION ORDERS:

- 8 (1) Jeremy Kysar d/b/a Blade Excavation's request for mitigation is DENIED.
- 9 (2) The \$3,000 penalty is due and payable no later than June 29, 2015.
- 10 The Secretary has been delegated authority to enter this order on behalf of the
Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective June 18, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
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.