



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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May 3, 2021

Mark L. Johnson, Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

RE: *Washington Utilities and Transportation Commission v. North Sky Communications, LLC*
Commission Staff's Response to Application for Mitigation of Penalties
Docket DG-210184

Dear Mr. Johnson:

On April 6, 2021, the Washington Utilities and Transportation Commission (Commission) issued a penalty against North Sky Communications, LLC (Company) in the amount of \$10,000 for a violation of RCW 19.122.055(1)(a), as follows:

- **\$10,000 penalty for the violation of RCW 19.122.055(1)(a) that occurred on May 12, 2020.**

This violation was for damage to an underground natural gas facility on May 12, 2020, that occurred because the Company failed to notify the one-number locator service before beginning excavation. North Sky Communications' failure to notify the one-call locator service resulted in damage to a natural gas line when the Company was hand digging with a shovel on an expired ticket.

On April 15, 2021, the Company responded to the Commission's penalty assessment by admitting the violation and requesting mitigation because of the actions they took post-incident; including additional supporting documentation regarding the Company's participation in Dig Safe training.

RCW 19.122 is clear in its requirements that the excavator is responsible for notifying the one-call center before excavating and authorizes the Commission to assess a penalty of up to \$10,000 if an excavator fails to provide the required notice and causes damage to natural gas or hazardous liquid underground facility. The Company requested mitigation of its \$10,000 penalty amount, noting that the crew supervisor had failed to renew the dig ticket prior to continuing to work in the area. The Company's response explained there were still locate marks visible and that the crew was using safe digging methods by hand digging, however the employee digging was careless and struck the gas line. The company explained that the employee has since been terminated from the Company, and the supervisor that was in charge that day has been moved to another position within the Company.

North Sky Communications has been penalized previously by the Commission on two (2) previous occasions and received one (1) warning letter. The penalty amount recommended was \$10,000, which is the typical penalty amount assessed in these circumstances. The previous penalty assessment in August 2019, DG-190624, was mitigated from \$5,000 down to \$2,500, with \$2,500 being suspended on the condition North Sky Communications have no additional Dig Law violations for twelve (12) months. The current violation occurred in May 2020, nine (9) months later. This new violation will initiate re-imposing the previously suspended penalty of \$2,500. Staff also considers that although NUCA Dig Safe training was not available during 2020, 44 North Sky employees have attended the training since it became available in 2021.

Staff believes that the Company's response and mitigation request with supporting documentation indicates that the Company has improved its processes and made worker and public safety around underground utilities a priority and that the Company's mitigation request warrants consideration by the Commission.

North Sky is a large telecommunications construction contractor with several offices throughout Washington and the lower 48 states. The Company is estimated to have between 70 and 200 employees, and annual revenue of between \$5 million - \$10 million.

Therefore, staff recommends that the Commission offer to suspend \$5,000 of the \$10,000 penalty amount for 12 months on the condition that North Sky incurs no additional dig law violations within 12 months of the date of the Commission order. Staff believes that the penalty amount assessed could be reduced to \$5,000 since the previously suspended penalty of \$2,500 from DG-190624 is also immediately due, for a total of \$7,500.

If the Commission discovers any subsequent violations of RCW 19.122 within the 12-month period, the \$5,000 from DG-210194 suspended penalty amount will become immediately due and payable, in addition to any penalties that may be assessed for the subsequent violation(s).

If you have any questions, please contact Joice Hagen, Compliance Investigator, Pipeline Safety and Damage Prevention, at (360) 664-1321, or by email at Joice.Hagen@utc.wa.gov.

Sincerely,

Sean C. Mayo, Director
Pipeline Safety