

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Penalty)	DOCKET DG-150491
Assessment Against)	
)	ORDER 01
)	
TOM WISE)	INITIAL ORDER ON BRIEF
TANK WISE, LLC)	ADJUDICATION; AFFIRMING
)	PENALTY ASSESSMENT
)	
In the Amount of \$2,000)	
)	
.....)	

1 **Background.** Puget Sound Energy (PSE) submitted two natural gas damage reports to the Damage Incident Reporting Tool (DIRT) against Mr. Tom Wise (Mr. Wise) and his excavation business, Tank Wise, LLC, on October 2, 2013, and December 3, 2013. PSE alleges that Mr. Wise failed to notify a one-number locator service prior to beginning excavation on two occasions in violation of RCW 19.122.030(1)(a). The utility also asserts that Mr. Wise damaged two of PSE’s natural gas service lines.

2 The regulatory staff (Staff)¹ of the Washington Utilities and Transportation Commission (Commission) conducted an investigation into the damage reports and issued a penalty assessment against Mr. Wise in the amount of \$2,000 for both alleged violations RCW 19.122.030(1)(a).

3 **Procedural History.** On April 9, 2015, Mr. Wise filed a request for hearing, stating that, with regard to one of the alleged violations, the service line was uncovered and he could see where it was and did not need to call for a locator. On April 24, 2015, the Commission set this matter for a brief adjudicative proceeding (BAP)² before

¹ In a formal proceeding, such as this, the Commission’s Staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

² RCW 34.05.482 *et seq.* and WAC 480-07-610.

Administrative Law Judge (ALJ) Marguerite E. Friedlander. The Commission convened the BAP hearing on June 5, 2015.

4 **Appearances.** Tom Wise, owner of Tank Wise, LLC, Seattle, Washington, appeared *pro se*. Brett Shearer, Assistant Attorney General, Olympia, represented Staff.

5 **Evidence.** Mr. Wise admitted at hearing both violations alleged by Staff. He also testified at hearing that he is aware of the seriousness of his actions and acknowledges that the consequences of a natural gas pipeline rupture can include injury and even death. He explained that he has over two decades of experience installing and decommissioning below-ground tanks. Prior to opening his excavation business, Mr. Wise was employed in the oil industry.

6 **Discussion.** RCW 19.122.030(1)(a) mandates that “an 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.”³ Further, an excavator is prohibited from excavating “until all known facility operators have marked or provided information regarding underground facilities as provided in this section.”⁴ Violators of these provisions are subject to civil penalties “of not more than ten thousand dollars for each violation.”⁵

7 Mr. Wise admits that, in both instances alleged, he excavated without first calling the one-number locator service in violation of RCW 19.122.030(1)(a). He is aware of the obligation to utilize the service, has done so on previous occasions, but acknowledges that he forgot to call prior to the October 2, 2013, and December 3, 2013, excavations. The Commission determines that Mr. Wise violated RCW 19.122.030(1)(a) and affirms Staff’s recommended penalty in the amount of \$2,000.

8 During his testimony, Mr. Wise appeared to shun compliance with the statute due to his extensive career history with the oil industry and subsequent excavation business. While Mr. Wise’s knowledge of these fields is, indeed, comprehensive, the law

³ RCW 19.122.031 specifically exempts various excavation activities from the reporting requirement in RCW 19.122.030. However, Mr. Wise admitted at hearing that the exemptions do not apply to his actions, so this Order will not address them.

⁴ RCW 19.122.030(5).

⁵ RCW 19.122.055(1)(a).

applies equally to him as it does to any other individual excavating within the state. The facility operator, defined by statute as “any person who owns an underground facility or is in the business of supplying any utility service or commodity for compensation,” is in the best position to know where the underground facilities are located and to mark them accordingly.

- 9 The penalty assessment in the amount of \$2,000 is due and payable no later than thirty days after service of this Order.

ORDER

THE COMMISSION ORDERS THAT:

- 10 (1) The penalty assessment entered on March 30, 2015, against Tom Wise and Tank Wise, LLC, in the amount of \$2,000 is affirmed; it is due and payable no later than July 10, 2015.
- 11 (2) The Commission retains jurisdiction over the subject matters and parties to this proceeding to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective June 15, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
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 **five (5)** copies of any Petition or Answer must be filed by mail delivery to:

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