

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against TOWN AND COUNTRY TREE SERVICE in the amount of \$1,000	DOCKET DG-160328 ORDER 01 ORDER DENYING MITIGATION
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BACKGROUND

- 1 On April 18, 2016, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment DG-160328 against Town and Country Tree Service (Town and Country 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.
- 2 On May 10, 2016, Town and Country filed an application for mitigation and requested a hearing. The Company admits the violation occurred, but claims its customer secured a utility locate that did not show the presence of a gas line near the site of the tree the Company was tasked with removing.
- 3 On June 21, 2016, the Commission conducted a brief adjudicative proceeding before administrative law judge Rayne Pearson.
- 4 Larry Moore, owner of Town and Country, testified for the Company. Mr. Moore explained that Town and Country was originally contracted to remove the tree, but not its stump. At the last minute, the customer requested the Company remove the stump so that excavation could begin the next day as scheduled. Mr. Moore claimed that he verified with the customer that no utility lines were present near the tree stump.
- 5 Derek Norwood, pipeline safety engineer, testified on behalf of Commission staff (Staff). Mr. Norwood explained that the Commission assessed a reduced penalty of \$1,000 because this was the Company's first violation of RCW 19.122.030(1)(a). Staff believes penalties are appropriate for first time violations because of the potential risk to public safety posed by damage to natural gas lines.

6 Brett P. Shearer, Assistant Attorney General, Olympia, Washington, represents Staff.¹
Larry Moore, Owner, Milton-Freewater, Oregon, represents Town and Country.

DISCUSSION AND DECISION

7 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

8 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

9 Here, the Company did not introduce any new information at hearing that would warrant mitigation of the penalty. It is the Company’s responsibility to secure a utility locate prior to performing an excavation; it may not rely on a locate obtained by a third party. In any event, Staff presented photos and evidence at hearing illustrating that the tree in question was not included within the boundaries of the utility locate obtained by the Company’s customer. Finally, Staff noted at hearing that it had already considered the circumstances Mr. Moore explained prior to recommending a reduced penalty of \$1,000.

10 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 incident at issue could have resulted in a fire or an explosion. Accordingly, we find that the

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 (January 7, 2013).

Commission properly penalized Town and Country for damaging a gas pipeline, 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 \$1,000 penalty.

ORDER

THE COMMISSION ORDERS THAT:

- 11* (1) Town and Country Tree Service's request for mitigation is DENIED.
- 12* (2) Town and Country Tree Service must either file jointly with Staff a proposed payment plan or pay the \$1,000 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:

Attn: Steven V. King, Acting Executive Director and Secretary
Washington Utilities and Transportation Commission
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