

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against NORTH SKY COMMUNICATIONS, LLC, in the amount of \$5,000	DOCKET DG-190624 ORDER 02
In the Matter of the Penalty Assessment Against NORTH SKY COMMUNICATIONS, LLC, in the Amount of \$10,000	DG-210184 ORDER 02 DENYING MITIGATION; CONSOLIDATING DOCKETS; IMPOSING SUSPENDED PENALTY; IMPOSING AND SUSPENDING PENALTY, IN PART

BACKGROUND

- 1 On August 7, 2019, the Washington Utilities and Transportation Commission (Commission) issued a penalty assessment against North Sky Communications LLC (North Sky or Company) in the amount of \$5,000 (2019 Penalty Assessment), alleging one violation of RCW 19.122.030(1)(a) for failing to request a dig ticket prior to performing an excavation on one occasion.
- 2 On August 16, 2019, North Sky filed an application for mitigation, admitting the violation and requesting a decision based on the written information provided.
- 3 On September 16, 2019, the Commission entered Order 01, Denying Mitigation; Suspending Penalty in Part (Order 01). Order 01 suspended a \$2,500 portion of the penalty for one year, subject to the conditions that North Sky (1) pay the \$2,500 portion of the penalty that was not suspended, and (2) not incur any further violations of RCW 19.122.

- 4 On May 12, 2020, North Sky struck and damaged a Puget Sound Energy gas line while excavating without a valid locate ticket, and on April 6, 2021, the Commission issued a penalty assessment against North Sky in the amount of \$10,000 (2021 Penalty Assessment) in Docket DG-210184 for the repeat violation.
- 5 On April 22, 2021, the Company filed an application for mitigation of the 2021 Penalty Assessment penalty (Application), admitting the violation and requesting a decision based on the information provided. The Company provided supporting documentation showing the circumstances surrounding the damage event, the Company's response, and its safety training record. North Sky also explained that the employee who caused the damage is no longer with the Company.
- 6 On May 3, 2021, Commission staff (Staff) filed a response to the Application recommending the Commission: (1) impose the suspended \$2,500 penalty in Docket DG-190624; and (2) deny the Company's request for mitigation in Docket DG-210184, but suspend a \$5,000 portion of the \$10,000 penalty for 12 months on the condition that North Sky incurs no additional dig law violations within 12 months. In its letter, Staff states that it believes the documentation the Company provided with its request for mitigation indicates that the Company has improved its processes to prioritize public safety around underground utilities.
- 7 On May 18, 2021, the Company paid both the \$2,500 suspended portion of the penalty in docket DG-190624 and the proposed penalty of \$5,000 in docket DG-210184.

DISCUSSION AND DECISION

1. Consolidation

- 8 Because the violations cited in the 2021 Penalty Assessment gave rise to the enforcement actions taken in both dockets, the Commission exercises its discretion to consolidate these proceedings. Accordingly, Docket DG-190624 and Docket DG-210184 are consolidated.

2. Imposition of Suspended Penalty in Docket DG-190624

- 9 Order 01 suspended a \$2,500 portion of the \$5,000 penalty in Docket DG-190624 on the condition that the Company incur no repeat violations of Washington state dig law within 12 months of September 16, 2019. The violation cited in the 2021 Penalty Assessment occurred seven months later, on May 12, 2020. Accordingly, the Commission now imposes the \$2,500 portion of the penalty that was suspended. Because the Company has

preemptively paid \$2,500 towards the anticipated imposed penalty, no further amount is due in Docket DG-190624.

3. Assessment and Suspension of Penalty in Docket DG-210184

10 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. In Docket DG-210184, the Commission assessed the maximum penalty of \$10,000 because this was the Company's fourth documented violation.

11 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

12 Here, Staff recommends the Commission suspend \$5,000 of the penalty, subject to conditions. We agree with Staff's recommendation. The Commission's goal in any enforcement action is to obtain compliance. The Company has provided ample evidence that it continues to prioritize public safety and that it is continuing to make a dedicated effort to train its employees regarding the requirements of RCW 19.122. Accordingly, the Commission assesses a \$10,000 penalty against North Sky, and suspends a \$5,000 portion of that penalty for a period of 12 month from the date of this Order, at which point it will be waived, subject to the condition that North Sky must not incur any additional violations of RCW 19.122. Because North Sky paid \$5,000 towards the anticipated penalty in Docket DG-210184, no further amount is currently due.

ORDER

THE COMMISSION ORDERS:

- 13 (1) Docket DG-210184 and Docket DG-190624 are consolidated.
- 14 (2) The \$2,500 portion of the penalty that was suspended in Docket DG-190624 is imposed, and \$2,500 of the amount paid by North Sky Communication, LLC, on May 18, 2021, is credited toward that penalty. No further payment is due.

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

- 15 (3) The Commission assesses a \$10,000 penalty against North Sky Communications, LLC. The Commission suspends a \$5,000 portion of the penalty for one year, and will then waive it, subject to the condition that the Company incur no further violations of RCW 19.122 within that year. The Commission credits \$5,000 of the amount paid by North Sky Communications, LLC, on May 18, 2021, toward the \$5,000 portion of the penalty that is not suspended. No further payment is currently due.
- 16 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 14, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK L. JOHNSON
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.