

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment) DOCKET DG-144098
Against)
) ORDER 02
JEREMY KYSAR d/b/a BLADE)
EXCAVATION) REVISED ORDER GRANTING
) 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.
On June 10, 2015, Commission staff (Staff) filed an amended response, clarifying the
basis for the violations and recommending the Commission deny the Company’s request
for mitigation.

3 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 file a response.

4 On June 18, 2015, the Commission entered Order 01 denying the Company’s request for
mitigation.

5 On June 24, 2015, Staff filed a second amended response recommending the Commission
suspend the penalty on the condition of future compliance. Staff’s recommendation is
based on new information about the Company’s owner, Jeremy Kysar, who recently
experienced a devastating personal tragedy that rendered him unable to respond to Staff’s
first amended response by the deadline. In light of the seriousness of Mr. Kysar’s
circumstances, Staff requests the Commission reconsider, and give additional weight to,
the Company’s compliance history. Since the violations occurred in December 2013,

Blade Excavation has requested more than 60 utility locates without incurring any new violations. Staff recommends the Commission suspend the \$3,000 penalty for 12 months, and then waive it, provided the Company incurs no repeat violations of RCW 19.122.030.

DISCUSSION AND DECISION

- 6 The Commission considers several factors when entertaining a request for mitigation, including whether new information that may not have been considered in setting the assessed penalty amount is introduced.¹ While Staff's first amended response briefly references the Company's compliance history, Staff's second amended response gives it greater weight in light of Mr. Kysar's extremely tragic situation. We agree with Staff that, given the circumstances, it is appropriate to revisit the Company's compliance history and revise our decision in Order 01.
- 7 The Company's demonstrated history of compliance, which includes more than 60 utility locate calls in an 18-month period without any new violations, is precisely the type of information the Commission considers when assessing reduced or suspended penalties. Had the penalties been assessed closer to the time the violations occurred in December 2013, the suspension period that Staff now recommends would have lapsed without incident. Given the Company's recent history of compliance, the violations are unlikely to recur; we therefore find it unnecessary to suspend the penalty for an additional 12 months. In light of Mr. Kysar's recent personal tragedy, we instead find it appropriate to grant the Company's request for mitigation and waive the penalty in its entirety.

ORDER

THE COMMISSION ORDERS:

- 8 (1) Jeremy Kysar d/b/a Blade Excavation's request for mitigation is **GRANTED**.
- 9 (2) No penalty is due.

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

- 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 26, 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.